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1 MS. HEDMAN: On behalf of the People of the
2 State of Illinois, Susan Hedman and Rishi Garg.

3 MR. TOWNSEND: Appearing on behalf of the
4 Coalition of Energy Suppliers and separately
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11 MS. EARL: Laura Earl with Jones Day on behalf
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13 MR. ROBERTSON: Eric Robertson, Illinois
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16 MR. LAKSHMANAN: On behalf of Dynegy, Inc.,
17 Joseph L. Lakshmanan.

18 MR. McGUIRE: Mark McGuire, McGuire Woods, LLP,
19 for Midwest Generation and Edison Mission Marketing
20 and Trading, and also Rebecca Lauer.

21 JUDGE WALLACE: Anyone else? All right. Thank
22 you. Let the record reflect there are no other

1 appearances at today's hearing.

2 A matter of clarification, AG Cross
3 Exhibit 1 was entitled Exelon Rating Energy
4 Presentation. There was, I believe, an agreement for
5 the last six or eight, six pages.

6 MS. HEDMAN: The portion that's entitled
7 Appendix.

8 JUDGE WALLACE: Okay. The appendix was
9 removed, and the exhibit we will submit to the
10 Clerk's office has those pages removed.

11 And then there was another exhibit
12 that it was pages taken out of a larger exhibit. And
13 are you still in the process of --

14 MS. HEDMAN: I expect Mr. Garg to be here any
15 second with those copies.

16 JUDGE WALLACE: All right, fine. That takes
17 care of those two then.

18 We have a number of witnesses today.
19 Mr. Nelson, Blessing, Rose, Thomas, Dr. LaCasse and
20 McNeil. If you are here, would you please stand up,
21 raise your right hand.

22 (Whereupon the witnesses were

1 duly sworn by Judge Wallace.)

2 JUDGE WALLACE: Thank you. Ms. Earl,
3 Mr. Fitzhenry?

4 MS. EARL: We would like to call Craig Nelson
5 to the stand, please.

6 CRAIG E. NELSON
7 called as a witness on behalf of the Ameren Illinois
8 Utilities, having been first duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. EARL:

12 Q. Good morning, Mr. Nelson.

13 A. Good morning.

14 Q. Could you please state your name and
15 address for the record.

16 A. I am Craig E. Nelson. Address is One
17 Ameren Plaza, 1901 Chouteau Avenue, St. Louis,
18 Missouri 63166.

19 Q. By whom are you employed and in what
20 capacity?

21 A. I am employed by the Ameren Illinois
22 Utilities. My duties are Vice President of Power

1 Supply Acquisition.

2 Q. Do you have before you the true and correct
3 copies of the testimony you prepared on behalf of the
4 Ameren companies?

5 A. Yes, I do.

6 Q. Do you have before you the direct testimony
7 of Craig Nelson, Ameren Illinois Utilities Exhibit
8 1.0, filed on March 15, 2007?

9 A. Yes.

10 Q. The rebuttal testimony of Craig Nelson,
11 Ameren Illinois Utilities Exhibit 5.0, filed on
12 e-Docket on April 6, 2007?

13 A. Yes, I do.

14 Q. Do you have any corrections to this
15 testimony that you would like to state for the
16 record?

17 A. Yes, one correction, please. On my direct
18 testimony, Exhibit 1.0, if you would turn to line 191
19 and you will see there is a date on that line of
20 January 8, 2008. I would like to correct that to
21 January 18, 2008. So it is 18 rather than 8.

22 Q. Do you have any other corrections to your

1 testimony?

2 A. No.

3 MS. EARL: Your Honor, at this time I would
4 like to tender this witness for cross examination.

5 JUDGE JONES: Just a quick question. The date
6 changed from what to what?

7 THE WITNESS: Again, it is Exhibit 1.0, line
8 191. The current date is January 8, 2008. I would
9 like to strike that and put January 18, 2008.

10 JUDGE WALLACE: My copy already had 18.

11 JUDGE JONES: Mine did, too.

12 THE WITNESS: I did ask for it to be corrected.
13 I wasn't sure if it was.

14 JUDGE JONES: That's fine. When in doubt we
15 will check it out. So the date that's in there is
16 the date that was intended.

17 MS. EARL: Yes, Your Honor.

18 JUDGE JONES: That's fine. Thanks for that
19 clarification.

20 All right. I believe there are some
21 parties with cross examination of Mr. Nelson. Who
22 would like to begin?

1 CROSS EXAMINATION

2 BY MS. HEDMAN:

3 Q. Good morning, Mr. Nelson. Susan Hedman on
4 behalf of the People of the State of Illinois.

5 A. Good morning.

6 Q. Mr. Nelson, could you please look at page
7 11 of your rebuttal testimony?

8 A. I am there.

9 Q. Starting at line 239 you state, "The
10 auction price certainly includes his", meaning I
11 gather Dr. Rose's, "quote, wholesale market price,
12 close quote, but necessarily also includes costs or
13 premiums associated with switching risk, load
14 following, MISO charges, the risk of laws or rules
15 changing, the risk of change in fuel prices, utility
16 credit risks, administrative costs, transactional
17 costs and other charges suppliers have to incur to
18 market and deliver the product."

19 Do you see that?

20 A. Yes, I do.

21 Q. Now, starting with the first item on your
22 list, premiums associated with switching risks, do

1 you have an estimate as to how large that premium was
2 in the auction price in 2006?

3 A. Not a specific estimate but as I have
4 explained in my testimony, we do have some idea of
5 the risk involved and the price difference by
6 comparing the LLP product to the FP. And as I tried
7 to explain in my testimony, I think a good portion of
8 that price difference is due to the enrollment
9 period, the propensity to switch over large customers
10 and the uncertain load obligation of suppliers and
11 the ensuing price risk during that open enrollment
12 period.

13 Q. And could you put a number on that?

14 A. No. It is \$20 for all of those things. I
15 don't know what specifically -- I can't put a
16 specific number on it.

17 Q. And would you expect that number to
18 decrease if the changes in enrollment period and
19 related changes that you recommend were implemented?

20 A. That's our hope, yes, and expectation, that
21 if we reduce supplier risk, the risk premiums will be
22 reduced and the bids will be reduced.

1 Q. And do you have an estimate of how much the
2 reduction would be as a result of what you propose?

3 A. No, I don't.

4 Q. One of the other items you list there is
5 the premiums associated with utility credit risk, is
6 that correct, on line 242?

7 A. I see it, yes.

8 Q. Do you have an estimate of the size of the
9 premiums associated with the utility credit risk that
10 was included in the 2006 auction price?

11 A. No, I don't.

12 Q. Would you agree that the premium associated
13 with utility credit risk would increase as a
14 utility's credit rating declines?

15 A. One would think it would, all else held
16 equal.

17 Q. And do you know the Ameren Illinois
18 Utilities' credit ratings at the time the auction was
19 held in 2006?

20 A. I don't know specifically. I do know for
21 sure that they were above investment grade at that
22 time. But the specific ratings I do not have access

1 to.

2 Q. So at the time they were above investment
3 grade. Is that still true today?

4 A. No, it is not.

5 MS. HEDMAN: Now, Your Honor, I have a number
6 of additional questions of this witness following
7 along this line. Then I am unable to complete
8 because we have not yet resolved the motion to compel
9 that we have that's pending before the Commission in
10 which we requested evidence from Ameren on the credit
11 rating agency issue.

12 And so I would ask that I have an
13 opportunity to continue my cross examination on this
14 issue at a later time when that matter has been
15 resolved.

16 JUDGE JONES: Excuse me, Ms. Hedman, do you
17 have additional cross questions at this time other
18 than those?

19 MS. HEDMAN: Yes, I do.

20 JUDGE JONES: Why don't you go ahead with the
21 rest of your cross questions and then we will get
22 back to the question you just raised. Would there be

1 any down side to doing that?

2 MS. HEDMAN: No, not at all, Your Honor.

3 JUDGE JONES: Let's do it that way and then we
4 will get back to that.

5 MS. HEDMAN: All right. Thank you, Your Honor.

6 Q. Now, you have identified MISO charges as
7 one of the additional costs that were included in the
8 2006 auction price; is that correct?

9 A. That's correct.

10 Q. Do you have any estimate of the size of
11 those charges?

12 A. Well, not at the time of the auction.
13 Since the auction, though, we have seen RSG charges
14 that were in excess of \$5 a megawatt hour, I believe.
15 And there are other MISO charges like admin charges
16 and I think they are more than that. I don't have a
17 complete list with me.

18 Q. In line 242 when you refer to
19 administrative costs are you referring to MISO
20 administrative costs or Ameren's administrative
21 costs?

22 A. I was referring to the supplier's

1 administrative costs.

2 Q. And do you have any estimate how large that
3 component is of the auction price?

4 A. No, I don't. That specific component,
5 again, in Staff's report they identify known prices
6 for capacity and energy and transmission and analyze
7 the difference between that sum and the \$65 auction
8 rise. The summation of all these other things that I
9 have listed is the difference. The summation is the
10 difference. So I don't know the specific amounts for
11 each one of these, but through subtraction I can
12 identify that all of these add up to that difference.

13 Q. Now, on line 250 of the same page you say,
14 "Mr. Rose may wish that wholesale suppliers would
15 willingly sell at production cost;" do you see that?

16 A. Yes, I do.

17 Q. Does Dr. Rose in his testimony advocate
18 that suppliers sell at production cost?

19 A. Indirectly I believe he does, because he is
20 suggesting that that be the benchmark or reserve
21 price and then it is not completely clear to me, but
22 I think what he was implying by his testimony is if

1 the auction result is higher than that reserve or
2 benchmark price, it fails and then we go procure
3 power some other way.

4 Q. Now, that's your inference as to what he is
5 implying. He doesn't actually say that in his
6 testimony, does he?

7 A. I am not certain whether he says that
8 directly or not. I don't think so.

9 Q. He doesn't -- I am sorry.

10 A. Same answer. I would have to go back and
11 check. I am not certain he said that directly.
12 That's the implication that I read into his
13 testimony.

14 Q. And in his testimony does he identify
15 production costs as the sole benchmark which should
16 be used?

17 A. He talks about two potential approaches to
18 arriving at the benchmark, one being market prices
19 and the other being production costs.

20 Q. And does he indicate that those are the
21 only two that the Commission should consider?

22 A. I don't believe he indicated or don't

1 remember if he indicated there were others.

2 Q. On the last page of your testimony, of your
3 rebuttal testimony, at lines 285 through 287, you
4 state that, "Setting a reserve price that does not
5 include all supplier costs or consider all supplier
6 risk does not make any sense."

7 Now, by that supplier cost and
8 supplier risk you are referring to the items on the
9 list that we just discussed on page 11?

10 A. Yes, it would include those items. All
11 those costs and risks and others that I may not have
12 listed should be considered if one were to set a
13 reserve price.

14 Q. And does Dr. Rose at any time advocate
15 setting a reserve price that omits any or all of
16 these costs and risks?

17 A. He sure didn't list them all in his
18 testimony. So I don't know what he is advocating.

19 Q. But he doesn't at any point say the
20 Commission should not consider factors other than
21 production costs and market prices; isn't that
22 correct?

1 A. I don't remember for sure.

2 Q. Mr. Nelson, do you have an economics
3 degree?

4 A. I am sorry?

5 Q. Do you have a degree in economics?

6 A. No, I do not.

7 MS. HEDMAN: Thank you. I think that's all.

8 With the exception that I would like
9 to reserve the opportunity to conduct further cross
10 examination on Ameren's credit rating.

11 JUDGE JONES: All right. I think it might be a
12 little more efficient if we go ahead and go forward
13 with the rest of the cross and then we will get back
14 to the question that Ms. Hedman raised, while we
15 still have the witness here on the stand. What will
16 happen at that point is to be determined, but for now
17 I think we can proceed with the rest of the cross.

18 So who else has cross, has signed up
19 for cross of this witness? Commission Staff?

20 MR. ROBERTSON: I am not going to have any
21 cross.

22 JUDGE JONES: Thank you. It looks like

1 Commission Staff.

2 MR. FOSCO: Actually, I believe our
3 questioning, we had five minutes for Mr. Nelson. I
4 could ask him this question and see if it is him or
5 Mr. Blessing that would be appropriate.

6 CROSS EXAMINATION

7 BY MR. FOSCO:

8 Q. Mr. Nelson, would you or Mr. Blessing be
9 the appropriate person to ask regarding Staff's
10 proposal for a blend of one, two or three contracts
11 in the auction?

12 A. Mr. Blessing is the one that offered
13 testimony on that subject and is our expert on it.

14 MR. FOSCO: Thank you. We would have no
15 further cross.

16 JUDGE JONES: Thank you. Mr. Townsend?

17 MR. TOWNSEND: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. TOWNSEND:

20 Q. Chris Townsend appearing on behalf of the
21 Coalition of Energy Suppliers. Good morning,
22 Mr. Nelson.

1 A. Good morning.

2 Q. If you could turn to your rebuttal
3 testimony, page 11, line 249, let me know when you
4 are there.

5 A. I am there.

6 Q. And there you conclude that it is critical
7 to recognize that we are dealing with reality and not
8 theory; correct?

9 A. Correct.

10 Q. And why is that critical?

11 A. Because, as I explained to the People in
12 the prior cross, I had read into -- it is Dr. Rose,
13 correct -- Dr. Rose's testimony that the reserve
14 price is a type of pass/fail, at least that's what I
15 thought. And that if the auction results did not
16 pass, then the auction would fail.

17 And the point I am making, part of the
18 point I am making in that line on 249, is that that
19 sounds good in theory but it is not a practical
20 reality. It is very, very difficult to come up with
21 a specific benchmark or a specific reserve price for
22 the Ameren Illinois Utilities' particular load in

1 that particular location with that particular load
2 factor on that particular day. And unless one goes
3 to the market in a competitive bid situation, one
4 will really never know what the appropriate -- or not
5 the appropriate but what the market price is. And it
6 is the reality of going to the market in a
7 competitive bid situation that determines the price.

8 So that's part of what I meant as I
9 was thinking about writing that sentence.

10 Q. And it would be inappropriate for the
11 Commission to rely solely on theory, but instead
12 should recognize that reality is much more complex?

13 A. Yes, and there is risk for customers as
14 well if we set up a reserve price that's pass/fail
15 and the auction or some other procurement of that
16 fails. Because the utility still has to procure
17 supply. They have dug themselves deeper into a hole,
18 and utilities and customers would face price risks
19 and liability risks as that second procurement
20 attempt is attempted.

21 Q. Why do customers choose to take service
22 from a supplier other than Ameren?

1 A. Probably based on many considerations,
2 would be my experience and my guess.

3 Q. And your experience suggests what type of
4 considerations do customers factor into making that
5 decision?

6 A. Price and non-price factors.

7 Q. And what are some of the non-price factors?

8 A. Well, we could go through the list that we
9 talked about earlier. The credit risk of the
10 supplier, the ability to deliver the nature of the
11 product that's being offered, price, of course. You
12 asked me about non-price, I am sorry. Nature of the
13 product, what the product is, credit risk of the
14 supplier, experience in the market, those types of
15 things. Of course, there is lots of things involved
16 in the nature of the product, if you want to beat
17 them there.

18 Q. And what are some of those things that can
19 differentiate the nature of the product?

20 A. Well, they do need full requirements
21 service, obviously. And the manner in which full
22 requirements service is obtained is something that

1 they would consider as they select a supplier.

2 Q. Such as green power might be one thing?

3 A. Green power, interruptible, not
4 interruptible.

5 Q. You are familiar with the term "migration
6 risk"?

7 A. Yes, I am.

8 Q. And you allege that suppliers include a
9 migration risk premium because they believe that
10 customers might find a product that's offered by a
11 retail electric supplier that is more economic or
12 otherwise more attractive; correct?

13 A. Yes, that's in general correct.

14 Q. And it could be that the price is more
15 attractive or that the product is more attractive to
16 the customer; correct?

17 A. It could be, yes.

18 Q. And Ameren's proposal to modify the
19 enrollment window would not minimize the migration
20 risk associated with customers finding a product
21 that's more attractive; would it?

22 A. I believe that customers would still have

1 the opportunity to shop for other products with ARES,
2 yes, as we shorten the enrollment window. Plenty of
3 opportunity.

4 Q. So if a customer wanted a different type of
5 product, the length of the enrollment window wouldn't
6 influence whether or not that customer migrated;
7 right?

8 A. Not necessarily. Given that today is April
9 and the end of the enrollment period is probably
10 sometime in February, there is plenty of time for
11 ARES to work with customers and determine what the
12 nature of the product is. And all non-price --

13 JUDGE WALLACE: This is Judge Wallace in
14 Springfield. To the people in the Chicago office,
15 you are making a bit of noise. So if you would
16 please keep it down, we would appreciate it. Thank
17 you.

18 A. It seems to me that there is, in my
19 judgment, there is plenty of time between now and the
20 end of the enrollment period sometime in February of
21 next year for ARES to work with potential customers,
22 develop contracts, decide on the nature of the

1 product and then wait for the resulting price from
2 the auction to compare it to.

3 Q. But with regards to the product itself, the
4 price might not matter to the customer; correct? The
5 price of the auction product might not matter if they
6 want a different product; correct?

7 A. It is hard for me to say that it won't
8 matter. I mean, if there is -- theoretically there
9 could be a customer that's bound and determined to
10 buy green power and so, yes, the price may not matter
11 in that situation, if they are determined to buy
12 green power and green power alone.

13 Q. Or if they had a different type of product
14 other than the full requirements annual product that
15 they wanted to receive from the supplier, then
16 perhaps the utility's product wouldn't matter to them
17 either?

18 A. Then it becomes a little grayer in my mind
19 because the utility product would include full
20 requirements, it would include interruptible. I
21 would think the customers would want to compare that
22 price and that service to what the ARES was offering.

1 Q. Ameren did not present any study or survey
2 regarding the percentage of customers that switched
3 to a retail electric supplier that was offering a
4 more attractive product; correct?

5 A. I am hesitating because in my testimony I
6 did talk about the large fixed-price customers that
7 enrolled to other -- something other than LFP. So we
8 did submit statistics in my testimony.

9 Q. But you didn't differentiate with regards
10 to the reason why customers switched; correct?

11 A. I believe that's correct.

12 Q. So you don't know what percentage of those
13 customers switched to a RES because the RES offered a
14 more attractive product versus the RES offering a
15 more attractive price; correct?

16 A. That's correct.

17 Q. And in preparing for this hearing did you
18 review the testimony of other witnesses who addressed
19 the issue of modifying the enrollment window?

20 A. Yes, I did review some of those witnesses.

21 Q. And did any witness present any study or
22 survey regarding the percentage of customers that

1 switched due to the RES offering a more attractive
2 product?

3 A. Not that I remember.

4 Q. Ms. Hedman walked through with you a number
5 of questions regarding your rebuttal testimony at
6 page 11 and the risks that you identify there. Do
7 you recall that?

8 A. Yes, I do.

9 Q. And at that point in your testimony you
10 identify load following risk, risk associated with
11 RTO charges, risk of law or rule changes, risks of
12 changes in fuel price, utility credit risks, risks
13 associated with an increase in administrative costs
14 and risks of transactional costs; correct?

15 A. I do list all those things. I am not sure
16 the risk modifier attaches to each one. But, yes, I
17 do agree it is the risk of those things and it is the
18 cost of those things.

19 Q. Did you present any analysis regarding what
20 percentage of the bid was comprised of any one of
21 those components?

22 A. I believe I did, yes.

1 Q. Which component?

2 A. Specifically, the price comparison between
3 LFP and FP which deals with switching risks and the
4 length of the enrollment period. So it is actually
5 two of the components. But I did present an analysis
6 in that regard.

7 Q. With the exception of that analysis did you
8 present any analysis regarding the load following
9 risk and the price associated with that?

10 A. I believe I did comment that the load
11 factor is greater for LFP than FP. So, yes, that is
12 some analysis.

13 Q. Did you present any analysis with regards
14 to the risk associated with the change in RTO charges
15 and the costs associated with that?

16 A. No.

17 Q. Did you quantify at all the risk associated
18 with the load following risk differences between the
19 two products that you identified?

20 A. No.

21 Q. Did you present any analysis regarding what
22 percentage of a bidder's bid was comprised of the

1 risk of the laws or rules changing?

2 A. No.

3 Q. Did you present any analysis regarding what
4 percentage of the bid was comprised of the risk of a
5 change in fuel price?

6 A. No.

7 Q. Did you present any analysis regarding what
8 percentage of the bid was comprised of a change -- I
9 am sorry, of the risks associated with a change in
10 the utility credit risk?

11 A. None for that specific one. But as I
12 testified earlier today, the Staff did present an
13 analysis of a combination of all these things.

14 Q. And just to be clear, I am asking about
15 each individual component because you did identify
16 two that you claim that you have separated out;
17 correct? And you do have some analysis regarding two
18 you allege; right?

19 A. Yes, because we have data with the 85
20 versus 65 lower prices from the auction.

21 Q. And you don't have any data with regards to
22 any of these others risks; right?

1 A. No, that's not right. Because as Staff
2 reported and Staff analyzed, there were known prices
3 for some of these components, and you can add those
4 known components up and arrive at a price. And from
5 memory it is about \$50. Then you can subtract 65
6 minus 50 to get a difference which is about 15. I
7 think it was about 10 in Staff's example, if I
8 remember. And the summation of all these costs and
9 risk is that difference.

10 So there is some analysis on it. It
11 is just that it is in aggregate, not specifically for
12 each one.

13 Q. And you didn't analyze any one of these
14 risks to determine how they would change between the
15 2006 auction and the 2008 auction, did you?

16 A. No, I did not.

17 Q. And the risks that you listed don't include
18 weather risks, do they?

19 A. Indirectly varying load following, or
20 directly. Load following includes weather risks.

21 Q. And load following also includes other
22 components; doesn't it?

1 A. Yes.

2 Q. Such as?

3 A. Well, a customer may move out of the
4 territory or a customer may come into the territory.
5 So the load may change. There may be increased usage
6 of electricity above what it was. So it would
7 include all of those things.

8 Q. And those components may be different risks
9 for the FP versus the LFP product; correct?

10 A. It's the same type of risk. The numeric
11 quantity of each may be different.

12 Q. And so it could be a different quantity of
13 risk for each one of those and you didn't quantify
14 that difference; did you?

15 A. No, I did not. Because I would have to
16 have access to supplier information, supplier bidding
17 strategy and all of that, and the Illinois Utilities
18 do not have access to any of those things. We have
19 access to the results from competitive bids.

20 Q. There are additional risks also, aren't
21 there?

22 A. I don't think this is a completely

1 comprehensive list of costs and risks. It is a
2 fairly complete one, though. It is, by the way,
3 close to what Dr. Rose did in ComEd's data request
4 when he replied. The lists are very similar.

5 Q. You don't identify legislative risks there,
6 do you?

7 A. I think I do. The risk of laws or rules
8 changing. I think that's legislative risk.

9 Q. Can you explain what that means then?

10 A. I can give you an example of something I
11 thought of as I drafted that. For instance, the
12 Illinois legislature could choose to impose a tax on
13 generation production and that would be a risk that
14 the supplier would face over the term of the
15 contract.

16 Q. Is it possible that legislative risk could
17 be different for the FP versus the LFP products?

18 A. I don't think so, but maybe it is possible.
19 Nothing comes to my mind.

20 Q. Is there a risk that the Commission's
21 prudent review could nullify the auction?

22 A. Sorry, the Commission's prudent review?

1 Q. Prudence review following the auction, is
2 that a risk that suppliers have to consider?

3 A. I am struggling because it is difficult for
4 me to understand the question. As I understand what
5 the Commission approved, a prudency review is much
6 after the fact. What the Commission -- as I read the
7 Commission's order in the auction case, if the
8 utilities and the auction manager follow specific
9 rules approved by the Commission, then the auction is
10 deemed prudent.

11 Q. But there is a risk that the Commission
12 could find that the auction was not prudent and
13 suppliers had to factor that into their bids;
14 correct?

15 A. Given what I just said, if the auction
16 manager and the utilities did not follow the rules,
17 yes, there is a risk that they would reject the
18 auction results.

19 Q. And did you present any analysis regarding
20 what percentage of the bid was comprised of that
21 risk?

22 A. I did not.

1 Q. Would you agree that there is also an
2 ongoing litigation risk, that is, a risk that the ICC
3 order establishing the auction could be appealed and
4 reversed on appeal?

5 A. Yes, there is always that possibility.

6 Q. And did you present any analysis regarding
7 what percentage of the bid was comprised of that
8 risk?

9 A. I did not.

10 Q. Do you know how much any one of those
11 factors that we discussed influenced the bidder's bid
12 in the 2006 auction?

13 A. As I said previously, I have a fairly good
14 idea of that two of those factors influenced bidders
15 in regard to the difference in price between LFP and
16 FP.

17 Q. Would you agree that there may be
18 additional factors that you have not thought of that
19 bidders may have factored into their bids in the 2006
20 auction?

21 A. Yes.

22 Q. And would you agree that there could be

1 different factors between the FP and LFP products
2 that the bidders may have factored into their bids in
3 the 2006 auction that you are not aware of?

4 A. Yes.

5 Q. Do you anticipate that each of the risks
6 that we discussed will be present in the 2008
7 auction?

8 A. I think each of these risks is present, but
9 some will be slightly or significantly modified, I
10 hope, as a result of this proceeding.

11 Q. Would you agree that there may be
12 additional factors that you have not even thought of
13 that may influence bidders in the 2008 auction?

14 A. Again, yes, I think that's true.

15 Q. And those factors may be different for the
16 FP and LFP customers; correct?

17 A. You seem to believe they could be
18 different.

19 Q. I would like to direct your attention to
20 lines 114 and 115 of your rebuttal testimony. Let me
21 know when you are there.

22 JUDGE JONES: What was that reference again?

1 MR. TOWNSEND: Lines 114 to line 116. Actually
2 I think I said 115, but I meant 116.

3 THE WITNESS: Okay, I am at line 114, 115 of my
4 rebuttal.

5 BY MR. TOWNSEND:

6 Q. Actually, and 116.

7 A. I am sorry. I see that as well.

8 Q. And there you state that 95 percent of the
9 eligible customers rejecting the utility offering is
10 a clear indication that the price of the offering was
11 too high; correct?

12 A. That's correct.

13 Q. Customers did not make that decision based
14 solely upon the amount of the migration risk premium
15 that was included in the overall price; correct?

16 A. I am not sure.

17 Q. You don't know why customers made the
18 decision they did, do you?

19 A. Well, we have a pretty good indication that
20 that \$85 price was not an economic alternative with a
21 95 percent rejection rate.

22 Q. But we already established that you don't

1 know what percentage of the customers who switched
2 suppliers did so based upon the differentiation of
3 the product; correct?

4 A. At the end of the day, customers need
5 supply for every megawatt hour used. So at the end
6 of the day they have got to get full requirements
7 supply or interruptible supply.

8 MR. TOWNSEND: Move to strike the answer as
9 non-responsive.

10 JUDGE JONES: Could we have the question and
11 answer read, please, and then we will see if there is
12 any response to the motion.

13 (Whereupon the requested portion
14 of the record was read back by
15 the Reporter.)

16 JUDGE JONES: Any response?

17 MS. EARL: Perhaps Mr. Nelson could rephrase
18 his response. I believe his response was directly
19 responsive to the question. I think it just perhaps
20 needs to be framed differently.

21 JUDGE JONES: All right. Well, we will deem
22 that as essentially that the motion to strike is

1 granted and the witness will be given an opportunity
2 to answer the question.

3 THE WITNESS: Could I have it read back one
4 more time, please?

5 JUDGE JONES: Just so the record is clear, the
6 answer is stricken, but there is an opportunity to
7 answer it again.

8 (Whereupon the requested portion
9 of the record was read back by
10 the Reporter.)

11 THE WITNESS: We have in part. As we discussed
12 previously, some customers may want a green product.
13 Some customers may want an interruptible product.
14 Some customers may want a full requirements product.
15 And at the end of the day, whichever one they select,
16 they need to acquire a megawatt hour from a supplier
17 for every megawatt hour used.

18 BY MR. TOWNSEND:

19 Q. But you don't know what percentage of
20 customers switched based upon a different product, do
21 you?

22 A. Correct. Let me revise that. I do know

1 the number of LFP customers that switched to ARES
2 versus the company's LRTP product. So in that case I
3 do know.

4 Q. But you still don't know what percentage of
5 the customers that took service from a retail
6 electric supplier did so because the product that was
7 offered by the retail electric supplier was different
8 than any product offered by the Ameren Utilities;
9 correct?

10 A. Correct.

11 Q. Did you present any study regarding how
12 much the premium would have been reduced if the
13 enrollment window had been 45 days instead of 50
14 days?

15 A. No.

16 Q. Given the Utilities' credit down grade,
17 would you anticipate that there would be an increase
18 in the overall cost of Ameren's annual products?

19 A. I don't know for sure. Theoretically one
20 would think so. That could be the result, yes.

21 Q. And it is possible that Ameren's credit
22 rating could be worse than the credit ratings of

1 retail electric suppliers offering similar products;
2 correct?

3 A. That's possible, yes.

4 Q. And that's one reason why a customer might
5 switch away from Ameren into a retail electric
6 supplier; correct?

7 A. That's one possible reason, yes.

8 Q. I would like to direct your attention to
9 lines 136 to 137 of your rebuttal testimony. Let me
10 know when you are there.

11 A. I am there.

12 Q. You state that, quote, I would expect that
13 customers are able to compare alternatives from RESs
14 in less than 20 days, close quote; correct?

15 A. That's correct.

16 Q. Did you present any study to support that
17 assertion?

18 A. Yes.

19 Q. And are you referring to the analysis
20 that's in your direct testimony?

21 A. Yes, and also a data request response as
22 well.

1 Q. Is the data request response a part of the
2 record in this proceeding?

3 A. I don't believe it is.

4 Q. Would you agree that it is possible that
5 some customers might need more than 20 days to make a
6 decision regarding their energy supply?

7 A. Yes.

8 Q. Let's turn to your direct testimony at page
9 7, lines 134 to 139. Let me know when you are there.

10 A. I am there.

11 Q. Is that the study that you are referring
12 to?

13 A. That's a summation of the results, yes.

14 Q. And you did see that a significant number
15 of customers in fact took more than 20 days; correct?

16 A. Yes, I did.

17 Q. In fact, 58 percent of the customers with
18 demands over three megawatts took more than 20 days;
19 correct? You can accept the math subject to check,
20 if you would like.

21 A. Subject to check.

22 Q. And 82 percent of the customers with

1 demands of 1 to 3 megawatts took greater than 20
2 days?

3 A. How many did you say again?

4 Q. 82 percent?

5 A. Subject to check, yeah.

6 Q. And, in fact, 392 out of the 528 customers
7 or 74 percent of the customers exposed to an
8 enrollment window took more than 20 days; correct?

9 A. That is correct. I also explained in my
10 testimony that 40 percent of the customers waited til
11 the final three days and suggested that as long as
12 that pre-option was open, customers may wait til the
13 final days of the enrollment period. And it makes
14 economic sense for them to wait.

15 Q. So are you saying that 60 percent of the
16 customers made uneconomic choices?

17 A. No, I am not saying that. I am saying that
18 as long as there is an option open, there is an
19 economic rationale for leaving that option open to
20 see if there may be price movements in the meantime.

21 Q. Do you present any survey of those
22 customers, analyzing whether those customers needed

1 the additional time?

2 A. No.

3 Q. So you don't know if they actually needed
4 until those final three days in order to make that
5 decision, do you?

6 A. I don't have specific customer by customer
7 information as to the time they needed or did not
8 need. I have the facts from when they opted out or
9 opted in to the product.

10 Q. And those facts suggest that nearly
11 three-quarters of them didn't act until after the 20
12 days expired; correct?

13 A. That's correct. And then 40 percent waited
14 until the last few days.

15 Q. You state at lines 137 to 138 that this is
16 not their first exposure to negotiating with
17 third-party suppliers; correct?

18 A. Yes.

19 Q. Would you agree that there might be new
20 businesses that could locate in the Ameren service
21 area?

22 A. I hope so.

1 Q. Would you agree that there might be
2 turnover within companies regarding the persons who
3 procure electricity?

4 A. Yes, there could be.

5 Q. So would you agree that for some customers
6 it might be their first experience in negotiating
7 with third-party suppliers?

8 A. It is possible for the -- for some
9 customers, yes. But the vast majority of customers
10 do have contracts with ARES in that customer group.

11 Q. But if a new business locates into the
12 Ameren service area, it might not have that
13 experience; correct?

14 A. That is correct.

15 Q. And if there is turnover within the
16 company, the person who procures the electricity
17 might not have experience with negotiating
18 third-party suppliers?

19 A. Yes. Sorry for interrupting. Yes, that
20 particular person may not have experience.

21 Q. And you didn't present any analysis of the
22 percentage of customers that do or do not have such

1 experience?

2 A. No, I did not.

3 Q. Would you agree that many more customers
4 entered into competitive supply contracts in 2006
5 than in any prior year?

6 A. I don't have those statistics in front of
7 me. I do know that of the 1850 megawatts eligible
8 for LFP load, about 1650 megawatts are now under
9 contract with ARES. So it is the vast majority. 200
10 megawatts are on RTP. So most of the customer load
11 is now under contract with ARES.

12 Q. And that's a significant increase compared
13 to your experience during the entire transition
14 period; correct?

15 A. Correct, yes.

16 Q. So for many customers they may have only
17 negotiated one competitive supply contract; right?

18 A. That could be, yes.

19 Q. And is it your testimony that that one
20 experience has transformed those customers from
21 novices to sophisticated energy purchasers?

22 A. No, not at all. I said many were

1 sophisticated. I didn't say all were sophisticated.
2 However, as we discussed, 1650 divided by 1850 is the
3 percentage that have negotiated with ARES and has
4 some experience, and some of those are sophisticated.

5 Q. And you don't know the percentages with
6 regards to either of those categories; right?

7 A. Either the sophisticated or not so
8 sophisticated?

9 Q. That's right.

10 A. Correct, I do not know the percentage for
11 that.

12 Q. And you don't know the percentages that
13 have negotiated one competitive supply contract
14 versus more than one competitive supply contract?

15 A. That is correct.

16 Q. At lines 133 and 134 of your rebuttal
17 testimony you recognize that the IIEC witness
18 suggests that certain governmental and institutional
19 customers may need more time to make supply
20 decisions; correct?

21 A. Correct.

22 Q. Did you present any survey with regards to

1 Ameren's institutional and governmental customers to
2 determine if they need more than 20 days to make a
3 decision?

4 A. I did not.

5 Q. I would like to turn your attention to
6 lines 202 to 204 of your rebuttal testimony. Let me
7 know when you are there.

8 A. I am there.

9 Q. Would you agree that segmenting the auction
10 increases the risk that there could be fewer
11 suppliers that participate in each segment?

12 A. I guess I would have to have your question
13 read back. I agree with what I said. I am not sure
14 that the way you read the question is exactly the way
15 I said it.

16 Q. I didn't mean to quote you. Let me ask the
17 question again.

18 Would you agree that segmenting the
19 auction increases the risk that there could be fewer
20 suppliers that participate in each segment?

21 A. Well, you are confusing me by the word
22 "segment." There were two segments in the last

1 auction, the fixed price and the RTP. So no one is
2 proposing there be two segments in this auction. So
3 I don't know how to answer your question.

4 Q. There are proposals -- well, there actually
5 is a Coalition of Energy Supplier proposal that would
6 simply have two segments in the auction; correct?
7 That would be set at, at least for the 400 kW and
8 above would be one segment and the 400 kW and below
9 would be another segment; isn't that correct?

10 A. I believe we are still not communicating.
11 I think you are referring to segments as products,
12 and that's where I am quibbling with you, sorry.

13 Q. And that is one way to segment the auction,
14 right, is in terms of the product? You have
15 different segments for each product, correct, or
16 different products are different segments, that's one
17 way to look at it; correct?

18 A. There are different products and you could
19 have more -- you could segment the auction into more
20 products, but we are not talking about any segments
21 in this auction. Essentially, what I mean by that is
22 in the past auction there were essentially two

1 auctions going on. Fixed price was one segment and
2 RTP was another segment. Now we are talking about
3 one auction with multiple products.

4 Q. And by further segmenting the products,
5 would you agree that there is a risk that there could
6 be fewer suppliers that participate in the auction
7 for each of the products?

8 A. Yes, there is that risk.

9 Q. And there is also a risk that if you have
10 too many products, that you could end up decreasing
11 the overall number of suppliers that participate in
12 the auction; correct?

13 A. I am not sure about that. Dr. LaCasse may
14 be better able to answer that.

15 Q. Would you agree that having fewer suppliers
16 in a market could increase the price in that market?

17 A. Potentially, yes. Our goal in the auction
18 is to have many suppliers with much more load bid
19 than supply needed. So more supply is better.

20 Q. And that's true at both wholesale and
21 retail; correct?

22 A. One would think so.

1 Q. Do you think so?

2 A. I think so. As a retail customer I would
3 like competition and multiple suppliers, yes. If I
4 were an industrial customer, yes.

5 Q. I would like to direct your attention to
6 line 205 of your rebuttal testimony. You use the
7 word "interchangeability." Do you see that?

8 A. Yes, I do.

9 Q. Would you agree that having auction
10 products that are interchangeable between ComEd and
11 Ameren benefits customers?

12 A. I think it does, yes.

13 Q. How so?

14 A. It gives suppliers the opportunity to bid
15 on like products. And then, assuming that there are
16 an adequate number of suppliers and much more supply
17 bid than need, it allows suppliers to move their bids
18 around among the products, helping to enable each
19 product to settle at market price.

20 MR. TOWNSEND: No further questions.

21 JUDGE JONES: At this time we will get back to
22 Ms. Hedman.

1 Ms. Hedman, sort of a preliminary
2 question here. Could you explain what your
3 additional questions would pertain to?

4 MS. HEDMAN: Your Honor, that's very difficult
5 to describe without having seen the material that we
6 have asked be produced.

7 JUDGE JONES: And that material relates to
8 what?

9 MS. HEDMAN: Ameren's communications with
10 credit rating agencies.

11 JUDGE JONES: Do you have some questions
12 regarding that of a general or preliminary nature,
13 without actually seeing the documents themselves?

14 MS. HEDMAN: Well, I have reached the point in
15 my cross examination of Mr. Nelson of establishing
16 that utility credit ratings are a factor in the
17 auction price, and that Ameren's credit rating is now
18 -- at the time of the last auction was investment
19 grade. It no longer is. And I wanted to explore
20 some further issues relating to that.

21 We have obviously some parties in this
22 proceeding that would like to respond to that

1 additional risk by creating bilateral credit
2 provisions. That risk is also reflected in the
3 price.

4 JUDGE JONES: What you are saying right now is
5 that you would need to see the documents before
6 having any additional questions?

7 MS. HEDMAN: That is correct.

8 JUDGE JONES: And you do not have any
9 foundational or preliminary questions that you would
10 be planning to ask without seeing the documents?

11 MS. HEDMAN: I presented those.

12 JUDGE JONES: All right. I take it that this
13 issue is still in dispute, between Ameren and the
14 People; correct?

15 MS. EARL: Yes, it is, although I would like to
16 point out -- I am not sure what questions Ms. Hedman
17 is contemplating asking the witness. I would like to
18 point out that the witness is involved in power
19 supply acquisition and he has testified regarding
20 power supply acquisition. He has not testified
21 regarding the Ameren Illinois Utilities' credit
22 ratings.

1 JUDGE JONES: Let's focus on the motion to
2 compel for a minute. And I guess my question at this
3 time is with reference to whether any of the issues
4 that are shown as in dispute in the filings on the
5 motion to compel have been resolved in any manner.

6 MS. EARL: No, they have not.

7 JUDGE JONES: In reviewing the filings that
8 have been made to date on the motion and having
9 reviewed those, it appears to us that there is a need
10 for some questions to be posed to the parties in
11 order to make an informed ruling on this particular
12 motion. And then it may also involve some argument.
13 I think there are some things that need to be
14 clarified, at least from our point of view, in order
15 to make an informed ruling.

16 Now, I think even the most casual
17 glances at the witness line-up for today and tomorrow
18 suggest that now is probably not the best time to
19 undertake that type of effort. It is hard to say but
20 it could be relatively time consuming to undertake
21 that. And that's not to say we will avoid it for
22 those reasons, but I think it will be necessary to

1 indicate to the parties that we do not believe it
2 would be efficient and in the best interests of these
3 hearings on the convenience of the parties to take
4 that up at this particular time. So we are going to
5 have to put that one on hold.

6 To the extent that the parties can
7 find some time to go over their areas of dispute --
8 and I am not suggesting you really have that time
9 today or tomorrow, given the schedule -- but we think
10 it might be beneficial to attempt to do that.

11 In any event, to the extent that we
12 reach the end of the hearing process tomorrow and
13 these issues remain unresolved, we will do whatever
14 we need to do from a scheduling standpoint to get it
15 addressed. It may involve setting some sort of short
16 date so that we can do some of the things that I just
17 mentioned kind of at the outset of this statement.

18 That's pretty much where we are at
19 with that right now. So to the extent that that
20 needs further attention, which we realize it may well
21 on this end, and to the extent that depending on the
22 outcome of that, to the extent that would involve

1 making a witness available or some other procedure,
2 we will just have to take that up at the time that we
3 do those things.

4 So we will leave it at that. Any
5 questions with regard to that?

6 MR. FITZHENRY: Judge, let me point out, as
7 in-house counsel I am aware of the nature of the
8 request. And I want to inform you and Judge Wallace
9 that, depending on your ruling, it might take some
10 time to pull together all that information given, as
11 we point out in our reply, the nature of the requests
12 with all the communications involving credit rating
13 agencies and all the Ameren Illinois Utilities and
14 their affiliates and subsidiaries going back to 2004.

15 So as we try to work through all this,
16 I mean, we have to be fair with what she is saying,
17 today we don't have that information collected
18 because it would take literally, I mean, days to put
19 together in final form. But I will speak to
20 Ms. Hedman as you suggest and we'll see if something
21 can be resolved.

22 JUDGE JONES: And I think the timing issues

1 that flow from this, whether they are the ones that
2 have just been stated or others, are things that to
3 the extent they are not resolved that in the meantime
4 we will have to take up when we do get back into this
5 motion. So depending on the outcome, one of the
6 things that would be addressed on the procedural side
7 would be timing, what would be a reasonable time to
8 produce documents. And then what would happen after
9 that in terms of some further opportunity to use
10 those in some manner would be things that would be
11 taken up when we deal with this.

12 Anything further?

13 MS. EARL: Just one more thing, Your Honor. As
14 I stated before, I don't believe a proper foundation
15 has been set to ask this witness questions about the
16 Ameren Illinois Utilities' credit ratings and the
17 documents that Ms. Hedman requests. And we would
18 just object to any questions on the Ameren Illinois
19 Utilities' credit ratings of this witness for that
20 reason.

21 JUDGE JONES: We are not -- I appreciate your
22 remarks. To the extent that the disputed matters in

1 the motion do not get resolved among the parties, we
2 will have to take all these things up. What that
3 might mean in terms of some witness having to answer
4 some questions with regard to anything that has been
5 ordered to be produced is one of the things that we
6 will deal with. Whether it is this witness or some
7 other witness or some other approach is something
8 that will be fair game, depending on what happens
9 with regard to the motion and as part of that
10 process.

11 Anything else?

12 MS. HEDMAN: Thank you, Your Honor.

13 JUDGE JONES: Thank you for your comments.

14 Is there any redirect of the witness?

15 MS. EARL: Could I have just a moment, Your
16 Honor?

17 JUDGE JONES: How long do you need?

18 MS. EARL: Just a minute.

19 JUDGE JONES: One minute? Go ahead.

20 (Pause.)

21 All right. Ms. Earl, do you have any
22 redirect?

1 MS. EARL: Yes, I do, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. EARL:

4 Q. Mr. Nelson, in your professional experience
5 have you had contact with BGS-LFP customers?

6 A. Yes, I have.

7 Q. Could you please explain your experience
8 with BGS-LFP customers?

9 A. I met directly with some and then I have
10 also, for example, made presentations in front of the
11 IIEC group and had personal contact with large
12 customers there. Over five years ago when I was in a
13 different position at Ameren, VP of Corporate
14 Planning, I actually served on the pricing committee
15 that actually approved prices for Ameren Energy
16 Marketing's bids to retail customers and their roles
17 in ARES. I have attended conferences and met large
18 retail customers. Anyway, over the past decade I
19 have had many opportunities to discuss matters with
20 retail customers and their representatives.

21 Q. Mr. Nelson, is your testimony based in part
22 on your experience with BGS-LFP customers?

1 A. Yes, it is.

2 Q. Could you please -- are you aware of
3 switching activity within the BGS-LFP group before
4 and after January 1, 2007?

5 A. As I testified earlier, I am aware there is
6 a lot more switching now than there was before. I
7 don't have the switching statistics for them in front
8 of me. But clearly there is a lot more switching in
9 that large customer group, significantly more.

10 Q. Following January 1, 2007?

11 A. Correct.

12 Q. Could you please explain how the Ameren
13 Illinois Utilities' proposal works regarding the
14 opt-in proposal to BGS-LFP products?

15 A. Yeah, it is important to note that it is
16 different. We are in a different situation than we
17 were in the first auction.

18 I can't find the specific place in my
19 testimony. But in the first auction customers
20 actually had to opt out of LFP. They were not -- if
21 they did not opt out, then by default they were
22 placed on LFP.

1 Now what we are proposing is that
2 customers actually have to opt into LFP. So right
3 now 95 percent of those customers are on something
4 other than LFP. If they are unable to make a
5 decision in that 20 days, they are not precluded from
6 any other competitive option. They are only
7 precluded from one option, LFP.

8 Plus, if they can't decide in that 20
9 days, they can always choose, as many customers did,
10 to go to our LRTP product and spend another month or
11 two or three months deciding whether they should sign
12 a contract with an ARES.

13 So my point is that customers can
14 handle this 20-day period because they are opting in,
15 and failure to act doesn't force them into anything.
16 It just -- the default now will be LRTP and they can
17 switch on and off LRTP at any time.

18 Q. And one more question, Mr. Nelson. Is
19 there anything that would preclude an ARES from
20 negotiating with a customer prior to the enrollment
21 window period?

22 A. No, nothing. And I would think good

1 business sense would cause them to do that, start
2 negotiating months in advance of the auction.

3 MS. EARL: No further questions.

4 JUDGE JONES: Recross? Thank you, Mr. Nelson.

5 (Witness excused.)

6 JUDGE JONES: Off the record.

7 (Whereupon there was then had an
8 off-the-record discussion.)

9 JUDGE WALLACE: Mr. Jolly, did you want to
10 enter an appearance?

11 MR. JOLLY: Sure. On behalf of the City of
12 Chicago, Ronald D. Jolly, 30 North LaSalle, Suite
13 900, Chicago, Illinois 60602. Thank you.

14 JUDGE WALLACE: We are off the record.

15 (Whereupon there was then had an
16 off-the-record discussion.)

17 JUDGE JONES: Back on the record.

18 MS. EARL: Call Jim Blessing to the stand.

19

20

21

22

1 JAMES C. BLESSING

2 called as a witness on behalf of the Ameren Illinois
3 Utilities, having been first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. EARL:

7 Q. Good morning, Mr. Blessing.

8 A. Good morning.

9 Q. Could you please state your full name and
10 address for the record?

11 A. James C. Blessing.

12 Q. Your business address?

13 A. 1901 Chouteau Avenue, St. Louis, Missouri
14 63103.

15 Q. By whom are you employed, Mr. Blessing?

16 A. Ameren Services Company.

17 Q. And what is your title?

18 A. My title is Manager of Power Supply
19 Acquisition.

20 Q. Do you have before you true and correct
21 copies of the testimony you prepared on behalf of the
22 Ameren Illinois Utilities?

1 A. Yes, I do.

2 Q. Do you have before you the direct testimony
3 of James C. Blessing, Ameren Illinois Utilities
4 Exhibit 2.0, filed on e-Docket March 15, 2007?

5 A. Yes, I do.

6 Q. Also Exhibits 2.1 and 2.2 Revised, to the
7 direct testimony, Exhibit 2.1 filed on March 13,
8 2007, and Exhibit 2.2 filed on April 19, 2007?

9 A. I have 2.1 Revised with me. I do not have
10 2.2 with me.

11 Q. Do you have before you the rebuttal
12 testimony of James C. Blessing, Ameren Illinois
13 Utilities Exhibit 6.0, filed on e-Docket April 6,
14 2007?

15 A. Yes, I do.

16 MS. EARL: I would like to tender this witness
17 for cross examination.

18 JUDGE JONES: Just a question about the
19 identification of the direct. What was that again?

20 MS. EARL: Excuse me?

21 JUDGE JONES: The identification of the direct
22 testimony and the date, what was that?

1 MS. EARL: The direct testimony was Exhibit 2.0
2 filed March 15, 2007.

3 JUDGE JONES: All right. Thank you.

4 MR. FOSCO: Staff can begin, Your Honor. Staff
5 can begin cross.

6 JUDGE JONES: All right. Mr. Fosco.

7 MR. FOSCO: Thank you.

8 CROSS EXAMINATION

9 BY MR. FOSCO:

10 Q. Good morning, Mr. Blessing.

11 A. Good morning.

12 Q. My name is Carmen Fosco. I am one of the
13 attorneys representing Staff. I have a few questions
14 for you, really just one line of questions.

15 Mr. Blessing, are you familiar with
16 the proposal of Staff witnesses Dr. Kennedy and
17 Mr. Zuraski for a mix of one, two and three-year
18 contracts for the fixed price product?

19 A. Yes, I am.

20 Q. And you are familiar with their proposed
21 blend of one, two and three-year contracts?

22 A. Yes, I am.

1 Q. And you generally understand that out of a
2 hundred percent of Ameren's load, 50 percent would be
3 served through one-year contracts, 20 percent through
4 two-year contracts and 30 percent through three-year
5 contracts?

6 A. Yes, sir.

7 Q. And for each auction for the two-year
8 contracts that would work out to ten percent per
9 auction?

10 A. That is correct.

11 Q. And for each auction for the three-year
12 contracts that would also work out to ten percent per
13 auction?

14 A. That's correct.

15 Q. In your rebuttal testimony you note Staff's
16 proposal but you don't seem to indicate whether
17 Ameren supports or opposes Staff's recommendation.
18 You make some comments. Could you tell us today, as
19 you sit here today, is it your position that you
20 would accept or support Staff's proposal for a blend
21 of one, two and three-year contracts?

22 A. The Ameren Illinois Utilities do support a

1 blend of products. We proposed a blend of one and
2 three-year products. I don't view the Staff's
3 proposal of including a two-year product as well as
4 being significantly different. So, yeah, we could
5 support that.

6 Q. And in your testimony you have indicated
7 that it is your position that the length of contracts
8 should support the twin goals of market-based rates
9 that are stable for residential and small business
10 customers and also attract the maximum amount of
11 interest in the auction; correct?

12 A. That is correct.

13 Q. And do you believe Staff's proposal meets
14 those goals?

15 A. Yes, generally they do. They do put a
16 little bit of additional load in each auction, which
17 will reduce the price stability somewhat. But
18 generally I think they do meet the goals.

19 Q. And that will balance out by attracting
20 more interest in the auction itself by suppliers;
21 correct?

22 A. Possibly, yes.

1 MR. FOSCO: Thank you. We have no further
2 questions.

3 JUDGE JONES: Thank you. I believe there are
4 other parties with questions.

5 MS. McKIBBIN: I will go next, Your Honor.

6 CROSS EXAMINATION

7 BY MS. McKIBBIN:

8 Q. Good morning, Mr. Blessing. I am Anne
9 McKibbin with the Citizens Utility Board.

10 A. Good morning.

11 Q. I just have a couple of questions, one
12 short line. Referring to your rebuttal testimony,
13 line 271, that paragraph.

14 A. I am there.

15 Q. All right. There you state that the Ameren
16 Illinois Utilities do not object to dividing the
17 residential and small business customer group into
18 two customer procurement groups; is that correct?

19 A. That is correct.

20 Q. Now, are you familiar or are you generally
21 familiar with Staff witnesses Kennedy and Zuraski's
22 direct testimony where they discuss the need to

1 collect hourly metering data to implement that sort
2 of a split?

3 A. Yes, I do recall reading that.

4 Q. And Staff witnesses suggest taking a
5 representative sample of that hourly metering data;
6 correct?

7 A. That is correct.

8 Q. Is that something that Ameren could
9 implement?

10 A. It is my understanding that that is
11 something that we can implement.

12 MS. McKIBBIN: All right. Thank you very much.

13 JUDGE JONES: Thank you, Ms. McKibbin. Other
14 parties have cross? All right, Mr. Townsend.

15 MR. TOWNSEND: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. TOWNSEND:

18 Q. Chris Townsend appearing on behalf of the
19 Coalition of Energy Suppliers. Good morning, Mr.
20 Blessing.

21 A. Good morning.

22 Q. Ameren does not object to the CUB proposal

1 to divide the residential and small business customer
2 groups into two customer procurement groups; correct?

3 A. That is correct.

4 Q. There would be two groups then; one that
5 would be up to 150 kilowatts and the other would be
6 non-residential customers with peak demands greater
7 than 150 kW and up to and including one megawatt;
8 correct?

9 A. That is correct.

10 Q. Is it Ameren's proposal to establish a
11 separate auction product for the 150 kW to one
12 megawatt customers?

13 A. That is correct.

14 Q. And would that be an annual product?

15 A. What I have proposed in my testimony is
16 having one-year contracts for that product.

17 Q. So you are agreeing that's an annual
18 product; right?

19 A. If you want to call it an annual product,
20 yes. I think an annual product or annual is more
21 common terminology for their tariffs.

22 Q. Let me understand. Is there a reason why

1 that would differ, annual for Ameren versus annual
2 for ComEd?

3 A. No, there is not.

4 Q. Why is it appropriate to offer the 115 kW
5 to one megawatt customers an annual product rather
6 than a blended product?

7 A. The reason why I proposed an annual or
8 one-year contract for that group of customers is
9 based off of the amount of load that is in that
10 class. There is approximately 900 megawatts of load
11 that falls in the 150 K to one meg group. And when
12 you begin to divide that amongst one and three-year
13 contract terms or possibly one, two and three-year
14 contract terms, you potentially end up with products
15 in the auction that have a very small quantity of
16 tranches up for bid. And it is my understanding that
17 it doesn't necessarily put up a roadblock of doing
18 that, but it does make developing things like
19 decremental formulas associated with the detailed
20 auction a little bit more complicated and maybe a
21 little bit less desirable from that standpoint, and
22 you begin to get products with very few tranches

1 available.

2 Q. And the small number of tranches then could
3 result in a higher auction price?

4 A. I am not sure whether that would be true,
5 but there is potential, yes.

6 Q. And the 150 kW to one megawatt group is
7 currently being served under a blended product;
8 correct?

9 A. Those customers are currently served under
10 the contracts that we procured for the FP class which
11 was a mix of one, two and three-year contracts plus
12 the five months to cover the set-up area.

13 Q. So three different contracts, one for 17
14 months, another for 29 months and the third for 41
15 months; correct?

16 A. That is correct.

17 Q. So for the 2008 auction Ameren is proposing
18 that the 17-month contract be replaced with a
19 12-month contract; correct?

20 A. For the portion of the -- for the portion
21 of the 17-month contract that relates to the 150 to
22 one meg load. The 17-month contract currently is

1 covering all load under one megawatt. So for the
2 portion that is currently covered under the -- that
3 covers the 150 to one meg, we would be replacing that
4 with the one-year contract buyer proposal.

5 Q. And would your proposal still have those
6 customers receive a price that is influenced by the
7 29-month contract and the 41-month contract?

8 A. That is correct.

9 Q. So in the 2009 auction the 29-month
10 contract would be replaced by a 12-month contract?

11 A. For that portion, correct.

12 Q. And for that portion in the 2010 auction,
13 the 41-month contract would also be replaced by a
14 12-month contract?

15 A. That is correct.

16 Q. How does Ameren intend to define the load
17 profile for the 115 to one megawatt customer group?

18 A. That would have to be based off of samples,
19 customer samples. We do not have hourly metering
20 down to 150 kW.

21 Q. And are you confident that you would be
22 able to accurately develop that load profile for that

1 group?

2 A. I believe those load profiles already
3 exist. They are currently being used to determine an
4 estimate of hourly loads for customers who have
5 switched to a RES that do not have hourly meters. So
6 they should already exist, and we would utilize those
7 same profiles.

8 Q. And for all customers over 400 kW, they
9 currently have hourly demand meters; correct?

10 A. I cannot answer definitively there. I know
11 in the procurement case a year and a half ago or so
12 we were told to install those meters. I don't know
13 what the status of that installation is.

14 Q. I think we heard yesterday that there was a
15 hundred percent installation for those customers as
16 of December. But assuming that that's the case, that
17 you have a hundred percent coverage for the 400 kW
18 and above, that would certainly assist in developing
19 this load profile; correct?

20 A. Actually, for those customers you would not
21 need a load profile. You would use the hourly data.

22 Q. Well, if their hourly data would develop

1 their profile, you wouldn't have to use an estimate;
2 correct?

3 A. That is correct.

4 Q. Do you propose to have an enrollment window
5 for the 150 kW to one megawatt customer group?

6 A. No, I do not.

7 Q. Why is an enrollment window inappropriate
8 for this customer group?

9 A. I have not offered any testimony in this
10 area. My understanding is that there is some
11 administrative hurdles to overcome. But I am really
12 not the right witness to comment on that.

13 Q. What migration rules does Ameren propose
14 for the 150 kilowatt to one megawatt customer group?

15 A. My understanding is that we are not
16 proposing any changes to the rules around customers'
17 ability to switch from the product.

18 Q. Is it your understanding that there are no
19 changes for the 150 kW to one megawatt group with
20 regards to either the enrollment window or the
21 migration rules?

22 A. My understanding is we have not proposed

1 any changes.

2 Q. And you believe that the rules with regards
3 to the enrollment window and the migration -- strike
4 that.

5 I would like to direct your attention
6 to your rebuttal testimony at pages 13, 14 where you
7 discuss the enrollment window proposal advanced by
8 Mr. Stephens. Let me know when you are there.

9 A. I am on pages 13 and 14.

10 Q. You proposed modifying the enrollment
11 window proposal advanced by Mr. Stephens; correct?

12 A. Yes, I did.

13 Q. How so?

14 A. I propose to eliminate the portion of
15 IIEC's proposal to include a pre-commitment on a
16 customer's part as part of the pre-qualification
17 process.

18 Q. And is it your understanding that IIEC
19 likewise has withdrawn that part of its proposal?

20 A. Based on my reading of their rebuttal
21 testimony, yes.

22 Q. And have you proposed other changes to

1 Mr. Stephens' enrollment window proposal?

2 A. I think I may have clarified some values of
3 what a short and long enrollment window would be,
4 seven days for a short and 20 days for a long
5 enrollment window.

6 Q. And is there also a change with regards to
7 the auction manager certifying that there is
8 sufficient load that had signed up for the seven-day
9 window?

10 A. That is correct.

11 Q. Can you explain that proposal?

12 A. What I am intending to try to accomplish
13 there is to insure that there is a sufficient amount
14 of load in either of the two products to insure that
15 there will be equal interest in the products, at
16 least based on size of the tranche that is available,
17 tranche or tranches. Basically, trying to make sure
18 that we have at least enough load in either group or
19 in both groups to have sufficient interest in the
20 tranche or tranches that result in the auction.

21 Q. Would you agree that if the enrollment
22 window is only seven days for some customers, that

1 there would be a high demand for consultants, agents
2 and brokers within that seven-day window?

3 A. I don't know that I can say yes or no to
4 that. I don't know how customers formulate that
5 decision.

6 Q. You wouldn't anticipate that during that
7 seven-day window that the customers would have an
8 increased desire to meet with their consultants,
9 agents and brokers?

10 A. To the extent that they use consultants,
11 then, yes, I would agree that they would want to talk
12 to them.

13 Q. And in particular during that seven-day
14 window?

15 A. That is possible, yes.

16 Q. Has Ameren examined its general account
17 agent form to determine whether it would have to
18 modify that form to accommodate Mr. Stephens'
19 proposal?

20 A. I do not know.

21 Q. Is it possible that that form might have to
22 be revised in order to be able to accommodate this

1 proposal?

2 A. I am not familiar with the form. So I
3 really can not respond.

4 Q. Do you agree that if the Commission were to
5 direct Ameren to adopt Mr. Stephens' proposal that
6 there would have to be a significant customer
7 education effort?

8 A. I would agree that there will have to be a
9 customer education effort.

10 Q. You don't think that that would have to be
11 significant?

12 A. That's beyond my job scope. I buy power.
13 There is other people who educate customers. They
14 would be in a better position to tell you whether
15 that is significant or not. I just -- I don't know.

16 Q. So you endorsed Mr. Stephens' proposal
17 without knowing the scope of the customer education
18 that would have to be undertaken?

19 A. I have talked to the individuals and asked
20 them whether or not the proposal was workable from
21 their end. They said yes. They did not comment on
22 whether the efforts on their part would be

1 significant or not significant.

2 Q. Would you anticipate that customer
3 communications would have to be prepared?

4 A. Yes.

5 Q. And that some communications would have to
6 occur prior to the pre-qualification notice being
7 sent?

8 A. Yes, that would probably be preferable.

9 Q. And there would have to be notice regarding
10 whether there was sufficient load to conduct an
11 auction for those customers who want a seven-day
12 enrollment window; correct?

13 A. Correct.

14 Q. And perhaps even some notice during the
15 enrollment window?

16 A. Notice of what? Whether there is
17 sufficient load?

18 Q. Or reaching out to customers to let them
19 know that this is in fact the time that the
20 enrollment window is occurring.

21 A. Yes, we would need to let the customers
22 know that the enrollment period is occurring.

1 Q. And there would have to be notice after the
2 seven-day enrollment window, notifying the customers
3 that that enrollment window had closed; correct?

4 A. I am not sure whether there would be a need
5 to separately notify them that it closed, given that
6 the documentation that would be sent to them prior to
7 the enrollment period would already have identified
8 when it closed.

9 Q. Ameren would incur costs associated with
10 designing, printing and serving materials and postage
11 associated with each one of those customer
12 communications; correct?

13 A. Yes.

14 Q. Would Ameren agree to submit draft
15 communications to the Commission?

16 A. I am not in a position to respond to that.

17 Q. Would Ameren have to conduct internal
18 training with regard to Mr. Stephens' proposal?

19 A. I believe so.

20 Q. And would that training include supervising
21 engineers, energy services specialists, engineering
22 representatives and answer center representatives?

1 A. I believe for some of those I would respond
2 yes. I would need some more clarification. There is
3 a lot of supervising engineers in the corporation. I
4 don't think all of them would need it.

5 Q. Did Ameren experience issues associated
6 with having inadequate communications with certain
7 customers related to the first auction?

8 A. I was not part of that communication
9 process. I can't answer yes or no definitively.

10 Q. Did Ameren do a good job of communicating
11 with its space heat customers prior to the first
12 auction?

13 A. I believe that better communication could
14 have taken place.

15 Q. And could better communication have taken
16 place following that auction as well?

17 A. I think in general better communication
18 could have taken place. I don't know whether it
19 should have happened before or after. I don't work
20 in that group.

21 Q. Is there going to be someone who testifies
22 for Ameren that does work in that group?

1 MS. EARL: Objection. The Ameren Illinois
2 Utilities have identified all their witnesses on the
3 witness list.

4 MR. TOWNSEND: I am just asking if there is
5 somebody else that it would be better for me to ask
6 that question to. If he doesn't know, he doesn't
7 know. That's okay. Just let me know if you know.

8 JUDGE JONES: Is that satisfactory to you?

9 MS. EARL: Yes, Your Honor.

10 JUDGE JONES: All right. You may answer.

11 THE WITNESS: Okay, thank you. The best
12 witness I would think would be Leonard Jones.

13 BY MR. TOWNSEND:

14 Q. Are you familiar with the Part 2 bidder
15 application process?

16 A. Yes, I am familiar with the process.

17 Q. Can you describe that process?

18 A. Can I describe the process?

19 Q. Let me offer a description and see if you
20 agree with it.

21 During that process would you agree
22 that each qualified bidder must submit indicative

1 offers for each section for which it is applying?

2 A. That is correct.

3 Q. And each bidder must provide preliminary
4 interest in each product for which it is applying?

5 A. That is correct.

6 Q. And each bidder must, or potential bidder,
7 must post a letter of credit associated with that?

8 A. I believe that to be correct also.

9 Q. Would you agree that the customer decisions
10 with regards to opting into the seven-day window and
11 the auction manager's determination of whether there
12 that been sufficient interest expressed in the
13 seven-day window would have to occur prior to the
14 Part 2 bidder application process?

15 A. Yes, I do.

16 Q. Have you performed an analysis to determine
17 whether or not there is sufficient time for that to
18 be able to occur?

19 A. I have not performed any analysis of that
20 nature.

21 MR. TOWNSEND: No further questions.

22 JUDGE JONES: Thank you. Mr. Robertson?

1 MR. ROBERTSON: Thank you.

2 CROSS EXAMINATION

3 BY MR. ROBERTSON:

4 Q. Mr. Blessing, would you refer to your
5 rebuttal testimony, page 13, lines 318 to 324?

6 A. I am there.

7 Q. Now, you have indicated that under your
8 modified version of the IIEC proposal you would have
9 the auction manager and the Ameren Utilities given
10 the flexibility to determine whether or not there is
11 sufficient load to offer these two products; is that
12 correct?

13 A. That is correct.

14 Q. And you use the term "flexibility" there.
15 What do you mean by the term "flexibility"?

16 A. What I mean is the auction manager and
17 utilities should have the ability to either procure
18 one hundred percent of the load from a single product
19 or from a combination of the two products, depending
20 on the results of the pre-qualification process.

21 Q. You mention later on in your testimony the
22 need to insure that there is sufficient product, and

1 you identify as an example, if tranches are set at 50
2 megawatts, you would assume that there would have to
3 be 50 megawatts of that product available -- I am
4 sorry, 50 megawatts worth of load requesting that
5 product before your proposal to divide the two
6 products would be implemented; correct?

7 A. That is correct.

8 Q. Other than determining whether or not there
9 is sufficient load to meet the identified tranche, is
10 there any other standard or criteria that the auction
11 manager and Ameren Utilities would use to determine
12 whether or not you could actually divide or have
13 these two separate products?

14 A. No, I am not proposing anything other than
15 insuring there is a sufficient amount of load for at
16 least one tranche.

17 Q. Now, also later on in your testimony you
18 mention again the Staff's proposal to give the
19 auction manager the ability to adjust tranches. And
20 in that discussion you make a reference to a cap on
21 the size of tranches of 300 megawatts?

22 A. Correct.

1 JUDGE JONES: Mr. Robertson, could you please
2 swing the microphone just a little bit towards you?

3 Q. Sure. Now, in that regard if that were in
4 fact to happen -- and I have no idea about the
5 practicality of it -- but if that were in fact to
6 happen, would you anticipate that you could obtain
7 300 megawatts of seven-day window product and 300
8 megawatts of 20-day window enrollment product?

9 A. It really depends on what the criteria is
10 used in determining what the expected value is. If
11 you look purely at switching statistics alone, the
12 switching statistics are going to show that only 50
13 megawatts in total have taken the LFP product now.

14 It is my opinion that it needs to go
15 beyond that and it needs to also look at the expected
16 change in results that may occur from other changes
17 that have occurred in the products, such as reducing
18 the enrollment windows and experiences from the first
19 auction, to re-size those and then potentially, yes,
20 you could have enough to get to 50 megawatts of each.

21 Q. Is it possible that under that circumstance
22 the auction manager and Ameren Utilities could decide

1 to divide the product anyway? Let's suppose you had
2 the 300 megawatt tranche but you had 250 megawatts of
3 one and 350 of the other product. Under that
4 circumstance would they have the flexibility to
5 divide the product between seven-day and 20-day
6 window anyway?

7 A. I am trying to think through the scenario.
8 You are saying that on an expected basis you are
9 going to use 50 megawatts but in total eligible it
10 would be capped at 300. In that case roughly 1800
11 megawatts of load divided by 300 would be six
12 tranches. So, yes, you could potentially get three
13 tranches of each category.

14 Q. Okay. Then I either misread last night
15 when I was looking at this, and maybe I am
16 misunderstanding. But you are not suggesting at line
17 378 of Exhibit 6.0 that tranches themselves would be
18 as large as 300 megawatts; is that correct?

19 A. No, I am not. What I am suggesting is that
20 as you are re-sizing the tranches based on expected
21 load, that you also take into consideration the total
22 eligible that would end up in the tranche, and I am

1 suggesting that we put some of them, and I use 300
2 megawatts as an example, so that a supplier does not
3 potentially end up with an upside potential or a
4 potential of a load being much, much higher than 50
5 megawatts and potentially as much as 1,800 megawatts.

6 Q. Now, the Staff's proposal to allow an
7 adjustment of the tranches by the auction manager, is
8 it your understanding or your perception of that
9 proposal that the tranches could be larger or smaller
10 than your 50 megawatt example in any given auction?

11 A. My understanding of the proposal is that on
12 an expected load basis there would continue to be
13 approximately 50 megawatts on a total eligible basis.
14 They could be larger than 50 megawatts.

15 Q. And the 50 megawatt limit that you mention
16 in your testimony is based on the expected -- I am
17 sorry, read his answer back to me.

18 (Whereupon the requested portion
19 of the record was read back by
20 the Reporter.)

21 And what is the -- considering your
22 answer there, is your 50 megawatts that you reference

1 the expected or the actual eligible load?

2 A. If you combined the two proposals together,
3 the 50 megawatts would be based off of expected.

4 Q. Now let's take the situation where under
5 your standard there is not sufficient load to offer
6 the seven-day product.

7 A. Okay.

8 Q. But there is sufficient load to offer the
9 20-day product. You suggested that under that
10 circumstance the auction manager and the staff at
11 Ameren Utilities would have the option to determine
12 which product would be offered.

13 A. That is correct.

14 Q. Now, under that hypothetical which, as you
15 would approach it, which product would be offered?

16 A. Under the scenario where there was
17 sufficient for the 20-day and not sufficient for the
18 seven-day, one hundred percent of the load would be
19 procured using the 20-day enrollment product.

20 Q. And I assume the same would be true if the
21 situation were -- I am sorry. That if the seven-day
22 product were the one with sufficient load and the

1 20-day product was the product without sufficient
2 load, you would suggest that the seven-day product
3 ought to be the one that would be procured?

4 A. That is correct.

5 Q. Now, to the extent there is sufficient
6 product for both -- I'm sorry, sufficient load for
7 both products, the decision to select the seven-day
8 product or the 20-day product or the decision to
9 select the seven-day window or the 20-day window
10 would be at the option of the customer; isn't that
11 correct?

12 A. Yes, that's correct. They would have done
13 that in the pre-qualification process that would have
14 led us to the conclusion that there was enough load
15 in each product.

16 MR. ROBERTSON: I think I am done. Thank you.

17 JUDGE JONES: Ms. Earl, any redirect?

18 MS. EARL: No, Your Honor. At this time I
19 would like to move to enter into evidence the
20 testimony and exhibits sponsored by witnesses Craig
21 D. Nelson and James C. Blessing as previously
22 identified in the record.

1 JUDGE JONES: That includes 2.0 Revised as
2 well; is that correct?

3 MS. EARL: Yes, Your Honor.

4 JUDGE JONES: Let the record show -- well,
5 first off, any objections? There are none. Ameren
6 Illinois Utilities Exhibit 2.0 and 2.1 are admitted
7 into the evidentiary record as filed on March 15,
8 2007, and March 19, 2007, respectively. Also
9 admitted is 6.0 filed on e-Docket on April 6, 2007.

10 MS. EARL: Your Honor, I believe I did not move
11 to enter into evidence Craig D. Nelson's testimony
12 earlier and I would like to do that at this time as
13 well. That's exhibit -- so all the exhibits are
14 Exhibit 1.0, 2.0, 2.1 Revised, 2.2 Revised, Exhibit
15 5.0 and 6.0.

16 JUDGE JONES: All right. Any objections? All
17 right, there are none. Those exhibits and
18 attachments also marked as exhibits are admitted as
19 filed on e-Docket on the dates shown on the exhibit
20 list filed by Ameren.

21 (Whereupon Ameren Illinois
22 Utilities Exhibits 1.0, 2.0, 2.1

1 Revised, 2.2 Revised, 5.0 and
2 6.0 were admitted into
3 evidence.)

4 JUDGE JONES: Anything else on that?

5 MS. EARL: No, Your Honor.

6 JUDGE WALLACE: It looks like we are doing
7 reasonably well and we haven't had a break yet. So
8 let's take a real five-minute break and come back and
9 we will start with Dr. Rose.

10 (Whereupon the hearing was in a
11 short recess.)

12 JUDGE WALLACE: Back on the record. Mr. Garg.

13 MR. GARG: Thank you, Your Honor.

14 DR. KENNETH ROSE

15 called as a witness on behalf of People of the State
16 of Illinois, having been first duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GARG:

20 Q. Rishi Garg on behalf of the People of the
21 State of Illinois.

22 Good morning, Dr. Rose. Could you

1 please state your name and business address for the
2 record.

3 A. My name is Kenneth Rose. My address is
4 P.O. Box 12246, Columbus, Ohio 43212-0246.

5 Q. And did you prepare what's marked as AG
6 Exhibit 1.0, the direct testimony of Kenneth Rose on
7 behalf of the People of the State of Illinois, which
8 was filed on e-Docket on March 15, 2007?

9 A. Yes.

10 Q. And it consists of eleven pages?

11 A. Yes, I believe so, yes.

12 Q. And was there an errata filed the next day
13 which made two changes to the document?

14 A. Yes, that's right.

15 Q. And were those two changes first the
16 addition of the year 2006 at the end of Footnote 2
17 and then the rephrasing of the language on lines 208
18 and 209?

19 A. That's my recollection, yes.

20 Q. And with those changes do you agree that
21 all of the statements in AG Exhibit 1.0, pages 1
22 through 11, are true and correct to the best of your

1 knowledge?

2 A. Yes.

3 Q. And if I ask you the same questions
4 contained in your testimony, would your answers be
5 the same?

6 A. Yes.

7 MR. GARG: I move to submit the testimony of
8 Dr. Ken Rose, AG Exhibit 1.0, a corrected version
9 which was filed on March 16, 2007, into the record
10 and tender the witness for cross examination.

11 JUDGE WALLACE: Mr. Garg, you filed a corrected
12 version on e-Docket?

13 MR. GARG: I did, Your Honor. In my submission
14 there were not substantive changes and so, for
15 whatever reason, I did not change the exhibit number.
16 I can do that and maybe make it AG Exhibit 1.0
17 Corrected or something and file that.

18 JUDGE WALLACE: That's okay. I just wanted to
19 make sure that you had filed the corrected version.

20 MR. GARG: It has been filed on March 16.

21 JUDGE WALLACE: All right. Any objection? AG
22 Exhibit 1.0 filed on March 16, corrected version, is

1 admitted into the record.

2 (Whereupon AG Exhibit 1.0 was
3 admitted into evidence.)

4 JUDGE WALLACE: Does anyone have cross of Dr.
5 Rose?

6 MR. RIPPIE: Yes, Your Honor.

7 JUDGE WALLACE: Mr. Rippie.

8 CROSS EXAMINATION

9 BY MR. RIPPIE:

10 Q. Good morning, Dr. Rose.

11 A. Good morning.

12 Q. In the procurement dockets, and when I use
13 the term "procurement dockets" you will understand me
14 to be referring to Commerce Commission Dockets
15 05-0159 and 05-0160 Consolidated in which you
16 previously testified; is that correct?

17 A. Yes.

18 Q. In the procurement docket you testified
19 that you had not served as a designer or manager of
20 an electric power auction; is that still true?

21 A. Yes.

22 Q. And is it also true that you have never

1 served as an electric auction monitor for any
2 jurisdiction using such an auction to procure supply
3 for electric utility default service?

4 A. Yes, that's still true.

5 Q. Now, Dr. Rose, on lines 23 through 25 of
6 your direct testimony you state that you recommend
7 the Commission assess results of electricity
8 procurement processes by comparing those results with
9 wholesale market prices and production costs of
10 electricity in Illinois. Did I read that correctly?

11 A. Yes, that's correct.

12 Q. Is it your recommendation that if the
13 auction clearing price does not compare favorably to
14 one of those two proposed benchmarks, that the
15 Commission should therefore reject it?

16 A. No.

17 Q. It is not?

18 A. No.

19 Q. Or is it rather that the Commission should
20 merely consider those two, call them data points, in
21 its review of the auction?

22 A. The recommendation was that they use those

1 as the basis for judging and evaluating the auction
2 results. As stated later on in the testimony, I
3 point out that there are other factors at line 39 and
4 40, for example. But there are other factors
5 considered besides the production costs and the
6 market price.

7 Q. So as I understand it then, your testimony
8 is those should be considered but they should not be
9 the only things that should be considered; is that
10 correct?

11 A. They should not be the only factors that
12 are considered for evaluation.

13 Q. Now, if, however, those factors were used
14 to set a reserve price and the auction failed to meet
15 that reserve price, that would be equivalent to those
16 being the only factors; would it not?

17 A. If that was set as the reserve price, yes.
18 And that's not also.

19 Q. So that is not your recommendation either?

20 A. That is correct.

21 Q. Did you identify any provision of Rider
22 CPP, the Commission's order in the procurement

1 dockets or in the auction rules that would prevent
2 the Commission from considering either wholesale
3 market prices or production costs if they so wish?

4 A. I don't see any reason why not.

5 Q. So you can't point to any provision that
6 would prevent that?

7 A. That would prevent the ICC from doing that;
8 that is correct.

9 Q. So no change in Rider CPP, the Commission's
10 order or the auction rules would be required to
11 implement your recommendations; isn't that also
12 correct?

13 MS. HEDMAN: Objection. In the initial
14 question I don't believe you mentioned the
15 Commission's order or I may have misheard.

16 Q. I am pretty sure I did. But if I didn't,
17 does that change your --

18 A. Restate the last question because there may
19 be a slight --

20 Q. Sure. You don't identify any change in
21 Rider CPP, the Commission's order in the procurement
22 dockets or in the auction rules that would be

1 required in order to implement your recommendation?

2 A. Well, it is my understanding that the
3 Commission doesn't do that now. But I don't see
4 anything that would prevent them from doing it.

5 Q. And would the same be true, namely that no
6 revision would be required in Rider CPP, the
7 Commission's orders or the auction rules in order for
8 the Staff, the Staff's retained auction monitor or
9 the intended auction manager from considering those
10 factors in their evaluation of the auction?

11 A. No, I don't see anything.

12 Q. Now, have you reviewed the Staff and the
13 auction manager reports?

14 A. Yes.

15 Q. The public reports or the public and the
16 private reports?

17 A. Just the public.

18 Q. Isn't it true that the Staff and the
19 auction manager both considered prices of
20 market-traded products in their evaluation?

21 A. I believe the Staff did, and also I cite it
22 in my testimony and those are the numbers that I use.

1 Q. Now, Dr. Rose, would you agree that in past
2 testimony before this Commission you have confirmed
3 that you are not opposed to workable competitive
4 markets?

5 A. That is correct.

6 Q. And you continue to adhere to that position
7 today?

8 A. Well, as I believe I stated under cross
9 examination in the procurement dockets, as you are
10 calling it, I noted that there is some concern about
11 how well these markets are operating, particularly in
12 light of what's been going on in other regions of the
13 country. And I still am probably just as concerned
14 or more so than I was in 2005.

15 Q. I am several questions away from that point
16 yet. I am trying to establish the ground rules here
17 first.

18 And there is no doubt, though, that if
19 a market is workably competitive, you support it?

20 A. I would phrase it that a competitive market
21 would be better than regulatory means. But if you
22 can not have a competitive market or it is not

1 functioning, then it may be that regulation is
2 better.

3 Q. Sure.

4 A. And that depends on the analysis.

5 Q. Okay. We agree on what you said both now
6 and before. Is it also true that one of the reasons
7 why, if you had a workably competitive market you
8 would prefer it, is that customers can benefit by
9 virtue of greater efficiency and lower prices?

10 A. If we had a competitive market.

11 Q. Now, in general in such a market the
12 competitive price doesn't vary by individual
13 supplier; correct?

14 A. The competitive price is not dependent on
15 any particular supplier having any control over the
16 price.

17 Q. Yeah, that wasn't -- I agree with you, but
18 that wasn't my question. The question I asked you
19 was, when the competitive market clears, the price
20 doesn't depend on which supplier you are talking
21 about. There is a market clearing price; right?

22 A. That's basically correct.

1 Q. Well, do you recall a data request we asked
2 you where we -- it is 2.29 if you have it in front of
3 you. Where we asked you to define what competitive
4 price levels were, and when we asked you does this
5 competitive price level vary by supplier, you
6 answered no?

7 A. 2.29?

8 Q. 2.29.

9 A. Yes, and I believe my answer was consistent
10 with what I just said.

11 Q. Sure.

12 A. That's basically the definition of market
13 power.

14 Q. And that competitive price, though, to be
15 clear is the same for each supplier in the market if
16 the market is competitive?

17 A. Right, that is correct.

18 Q. Now, in the PJM markets in which ComEd
19 operates there is a single locational price for
20 energy in each zone and each period of time; right?

21 A. For all of PJM or for each cell?

22 Q. There is a single competitive -- sorry.

1 There is a single price, single locational price, for
2 each zone in each time period?

3 A. Well, there is actually nodal pricing, is
4 what they use in PJM.

5 Q. For load, those nodes are aggregated into
6 zones; is that correct?

7 A. That's correct.

8 Q. So I will give you the clarification.
9 Depending upon whether you are talking the generator
10 side or the load side, there is a single price for
11 each node or each zone for each period of time?

12 A. Subject to the constraints of the system.

13 Q. But there is not multiple prices at each
14 time at each location; right? There is only one.

15 A. That's right.

16 Q. And in the auction there is a single
17 clearing price, too; right?

18 A. That's right, depending on the product.

19 Q. For each product?

20 A. Right.

21 Q. And in a competitive market that single
22 clearing price is set by, on the one side, the

1 marginal seller and on the other side the marginal
2 unit of demand; right?

3 A. That's right.

4 Q. And at least in an efficient competitive
5 market, that clearing price must include recovery of
6 the generator's fixed costs as well as their variable
7 costs?

8 A. Typically, you say that's in the long run;
9 it would include fixed costs, but prices in the long
10 run in roughly equivalent to, say, long run average
11 costs as posed to short run being short run marginal
12 costs. I think that's consistent with what you just
13 said.

14 Q. That's what I was going to say. I think
15 that's the same as yes; you just gave me more detail?

16 A. Right.

17 Q. Now, winning suppliers in the auction
18 provide a range of products to Commonwealth Edison;
19 do know not?

20 A. That's right.

21 Q. Let's take the fixed price segment.

22 A. You want me to read the results?

1 Q. Unless I tell you otherwise, the rest of
2 these questions I am talking about the fixed price
3 segment, not the hourly price segment, okay. They
4 provide energy; is that correct?

5 A. That's correct.

6 Q. And you would expect, would you not, that
7 ultimately the energy component that they supply is
8 going to be generated by a variety of different types
9 of generators; is that true?

10 A. That's correct. You mean as in generation
11 source?

12 Q. Yes.

13 A. Yes.

14 Q. Including base load, intermediate, peaking.

15 A. And private fuel sources as well.

16 Q. Good, we agree. They also provide
17 capacity, that is the winning suppliers also provide
18 capacity; correct?

19 A. That is correct.

20 Q. They provide certain transmission services?

21 A. Yes.

22 Q. Certain ancillary services?

1 A. Yes.

2 Q. They are responsible for paying for certain
3 other PJM services, for example, Schedule 1 charges?

4 A. That's right.

5 Q. Are there others?

6 A. Well, I think others were identified by --
7 first of all, those that you just mentioned are
8 mentioned in my testimony. So I think we are still
9 in agreement on what the costs were, the ancillary
10 services, the transmission and the energy component.
11 And I am forgetting one.

12 Q. Energy, capacity, transmission,
13 ancillaries.

14 A. Capacity is the other one.

15 Q. Are there others, before we get into --

16 A. Well, there may be other costs that are
17 incurred by the supplier such as administrative costs
18 and the people that are participating in the auction.

19 Q. But in your view there are no other
20 products or services that they provide?

21 A. Well, are you breaking down the full
22 requirements that are being offered by the sub costs

1 or are you talking about a specific product that they
2 have to supply.

3 Q. I am not -- I haven't started talking about
4 their costs. I have just been asking you about what
5 products they supply. And we, I think, agree they
6 supply energy, products and services, energy,
7 capacity, certain transmission services, certain
8 ancillary services and they indirectly supply by
9 paying for it certain other PJM functions?

10 A. If I understand you correctly, that's
11 right.

12 Q. Are there any others in your view?

13 A. Well, there are other markets that PJM
14 operates like FPRs, just in pricing markets.

15 Q. Really that wasn't my question. My
16 question was simply are winning suppliers in your
17 view providing any products or services other than
18 the five we have gone through?

19 A. No, I don't believe so.

20 Q. Okay. You would agree, however, that they
21 -- whatever products and services they are obligated
22 to provide, they are obligated to provide those

1 throughout the contract period, regardless of what
2 happens to demand and regardless of what happens to
3 price; right?

4 A. That's correct.

5 Q. Now let's talk for a minute about your
6 market price benchmark. Are you okay with me using
7 the word benchmark? I think you use it in your
8 testimony, too.

9 A. Yes, that's right.

10 Q. To derive --

11 A. As long as it's understood that that's the
12 basis and not alone.

13 Q. That's why we did the first set of
14 questions first.

15 To derive your proposed market price
16 benchmark, you begin with some ComEd load zone LMPs;
17 right?

18 A. That's right.

19 Q. And the data which graphically got
20 represented on Figure 1 is historical LMPs from a
21 pre-auction period; is that right?

22 A. That is from January '06 to December of

1 '06.

2 Q. And the LMP's would have been different if
3 you had gone back to, say, the first quarter of '05;
4 right?

5 A. Yes. My concern with going back there was
6 that would pick up the effect of Hurricane Katrina
7 and the impact that that had on prices. And clearly
8 by September of '06 that obviously had been pretty
9 much dealt with, internalized by the market.

10 Q. Just as LMPs would pick up the effect of a
11 future hurricane if, God forbid, that happened again
12 next year?

13 A. Having a hurricane may have an impact on
14 gas prices and in turn affect the LMPs.

15 Q. Sure. Nonetheless, if you had gone back to
16 2005, the numbers would have been different?

17 A. Yes, they would have been higher probably
18 because of that effect.

19 Q. And those are spot market prices; right?

20 A. This is a real time market in PJM.

21 Q. Fair enough. Those are spot market prices,
22 right? They are not in any sense forward market

1 prices; right?

2 A. No.

3 Q. Or at least not forward by more than 24

4 hours; right?

5 A. These are the -- this is the balancing

6 market; this is not the --

7 Q. No, not forward at all.

8 A. There is a relationship between the forward

9 market and the spot market as we have just discussed

10 that can be effective where if there is higher

11 forward prices, then it will have an impact on the

12 spot market. There is a relationship between the

13 two.

14 Q. Once the forwards are manifested, they

15 affect the spot market prices?

16 A. That is right. And it is because, as we

17 discussed, of a possible event that might affect the

18 prices.

19 Q. This data, though, is the spot market price

20 not a forward price?

21 A. That is correct.

22 Q. Now, the CPP supplier's obligation, does

1 that change if it turns out that prices during the
2 delivery period differ from historical prices?

3 A. No, not their obligation.

4 Q. Does it change if their costs of acquiring
5 that power change, for example, because of a
6 hurricane, because of a change in fuel prices or any
7 other reason?

8 A. No.

9 Q. Does it change depending upon whether the
10 market moves against them so that they have either
11 opportunity or actual costs in addition to what they
12 expect?

13 A. No.

14 Q. Does it change if the load that they have
15 to serve differs from either what they expect or what
16 was being served during 2006?

17 A. Well in all these cases they are obviously
18 trying to project what they think. But obviously
19 once their obligated, they can't change it.

20 Q. And that would include changes driven by
21 weather, changes in the economy and changes in
22 switching?

1 A. Yes.

2 Q. Now, each CPP supplier assumes that
3 obligation over a lengthy time period; do they not?

4 A. Right, 17 months to 41 months, if I recall.

5 Q. Fair enough. And you would agree with me
6 that there is no doubt whatsoever that energy supply
7 costs vary significantly depending upon the duration
8 of the supply obligation?

9 A. Well, I would expect that result.
10 Interestingly, in the auction results the price did
11 not vary very much by contract length.

12 Q. I need to be clear. I am not talking about
13 what the suppliers think after they roll in all their
14 products and services in aggregate. I am talking
15 simply about the energy supply component.

16 And you would agree with me that you
17 would expect energy supply costs to vary
18 significantly depending upon the duration of the
19 obligation, would you not?

20 A. I would expect that, yes.

21 Q. And you would expect it to vary
22 significantly based upon the shape of the load; is

1 that also true?

2 A. Yes.

3 Q. And you would expect it to vary
4 significantly depending upon the certainty or,
5 conversely, the optionality of the load, would you
6 not?

7 A. Well, I am not sure what you mean by
8 significant. In terms of the price, the effect could
9 be relatively small.

10 Q. Well, in Data Request 2.06, if you have it
11 in front of you, we asked you whether you agree that
12 wholesale market prices of electricity to serve
13 Illinois load varied significantly based upon a
14 number of factor, and you didn't express any
15 confusion about the meaning of the word
16 "significantly."

17 So meaning the same thing as in your
18 answer here, you would agree that it will vary
19 significantly based on whether the load is certain or
20 optional; right?

21 A. That's true.

22 Q. Did you conduct any study or analysis

1 comparing spot market prices to long term, and by
2 that I mean 17 months or greater shaped full
3 requirements product?

4 A. I did look up the forward market which I
5 believe I gave you in response to your data request.

6 Q. Well, I understand that. But I am not sure
7 that you are answering the question I asked you. So
8 let me try again and maybe you are.

9 Isn't it true that you conducted no
10 study or analysis comparing spot market prices to
11 long term shaped full requirements products?

12 A. Outside of just looking at those prices and
13 comparing them to the spot market price I did not.
14 If that's your -- I am not sure what you mean by
15 analysis.

16 Q. Do you have Data Request 2.12 in front of
17 you? In Data Request 2.12 did we ask you whether you
18 conducted --

19 A. Greater than one year duration, and the
20 answer is still no.

21 Q. And that answer is unambiguously accurate;
22 right? You conducted no such analysis?

1 A. No.

2 Q. And is it -- I will probably mark it.

3 JUDGE WALLACE: You did leave something
4 unambiguous. You said one year; that was out of
5 context, I think.

6 THE WITNESS: There is a parenthetical.

7 BY MR. TOWNSEND:

8 Q. That's right. And in my question I said
9 greater than 17 months. And since anything greater
10 than 17 months is also greater than one year, I
11 thought I was being fair to you. But if it changes
12 your answer --

13 A. I didn't hear it that way, so it doesn't
14 change the answer. Because I took -- the reason for
15 the ambiguity is because I was looking into 2007 at
16 the time. But it wasn't greater than a year.

17 Q. And is it also true that you conducted no
18 study of the effect on supplier costs or on market
19 prices of uncertainties in load shape or load volume?

20 A. That is correct.

21 Q. Is it also true that you conducted no study
22 or analyses of the risk premiums reflected in market

1 prices resulting from either optionality in general
2 or suppliers' views of the optionality of this
3 particular product?

4 A. That is correct.

5 Q. Now, I am not going to talk about energy
6 price for awhile and I am going to flip to capacity
7 for a few minutes. You do talk about the necessity
8 on your market price benchmark of adding capacity; is
9 that correct?

10 A. That's right.

11 Q. Now, you used as your placeholder for
12 capacity the number out of the prism; is that
13 correct?

14 A. I believe that's where the Staff got their
15 number and converted it to megawatts, dollars per
16 megawatt hour. That's the number I used.

17 Q. And that's about \$10.73 a megawatt day; is
18 that, subject to check, accurate?

19 A. That would be -- subject to check. That
20 actually sounds high to me, but that's --

21 Q. It is \$10.73 a megawatt day or less.

22 A. I will take your word for it.

1 Q. I will take or less.

2 A. Or less.

3 Q. Do you know how that value of 10.73 or less
4 that Staff began with was derived?

5 A. Well, they used the load in the area to
6 convert it to megawatts per hour.

7 Q. But the capacity prices were backward
8 looking, not forward looking; right?

9 A. I believe they took the capacity market
10 prices from PJM.

11 Q. In 2000 and?

12 A. 2006, I believe.

13 Q. Backward looking, not forward looking;
14 right?

15 A. That is correct.

16 Q. Now, in fact, suppliers bidding in the
17 auction were facing uncertainty about the capacity
18 costs, were they not?

19 A. If you are referring to the changes in the
20 capacity market, that is correct.

21 Q. Well, actually they were referring to two
22 things. First of all, they were facing changes in

1 the structure of the capacity market; is that
2 correct?

3 A. That's correct.

4 Q. Second of all, they were facing the
5 inherent uncertainty of they didn't know whether that
6 market would clear?

7 A. That's similar to the energy pricing
8 uncertainty, yes.

9 Q. Do you know where it actually most recently
10 cleared?

11 A. Well, in terms of megawatt data, I believe
12 the price was 170 per megawatt day. I haven't
13 converted that into -- I think those were the highest
14 prices. And then there were some prices again down
15 much lower than that.

16 Q. I think you are thinking of the east
17 region. Prices for the ComEd, do you recall what
18 they were?

19 A. Well, PJM gave it as a range and I don't
20 recall the exact numbers for ComEd. But the numbers
21 ranged from probably less than \$10 to almost \$200 per
22 megawatt day.

1 Q. Would you accept subject to check that the
2 region including ComEd cleared at about \$40.80?

3 A. Subject to check.

4 Q. If that were true, and subject to check,
5 that would be roughly four times the number that the
6 historical capacity would have indicated; right?

7 A. That is correct.

8 Q. Last question on the market price
9 benchmark. We talked a lot about the details and the
10 analyses that could be done in the ComEd region. Is
11 it true that you have made no similar analysis or
12 study for MISO at all; right?

13 A. I have not.

14 Q. Okay. Let's switch to production cost
15 benchmark. Now, my goal here is to not revisit the
16 excruciatingly lengthy discussion in the procurement
17 docket. But let's see if we can avoid that.

18 You recommend that the Commission look
19 at production costs of electricity in Illinois; is
20 that correct?

21 A. No. Actually, it is that they look at the
22 production costs of supplying Illinois.

1 Q. And is it your testimony now that that is
2 not limited in your view to the production costs of
3 units in Illinois?

4 A. That's right.

5 Q. Should they look at the cost of units all
6 over the PJM region?

7 A. The study that I referred to did consider
8 outside of Illinois.

9 Q. But it only considered three other
10 companies essentially; right?

11 A. Well, they treated them as an import, and
12 also the loads from outside Illinois for model
13 simplification.

14 Q. Sure. But that was the date and area part
15 of the AEP area and an area to the south and west of
16 Illinois; right?

17 A. Right, toward Wisconsin also. So they were
18 taking the delivery points into Illinois and
19 surrounding states.

20 Q. But as it turns out, Wisconsin is not part
21 of MISO; right?

22 A. That's right.

1 Q. And there is a whole lot of PJM that they
2 didn't look at; right?

3 A. That's right.

4 Q. Now, in the current PJM market, supply
5 prices, supply in general, let's take that first, is
6 dispatched on a regional basis; right?

7 A. That's right.

8 Q. So to come back to my original
9 introduction, it is not your testimony here today
10 that the state of Illinois -- strike that, please. I
11 am going to start a different plan.

12 Is it your testimony today that the
13 state of Illinois is an appropriate geographic region
14 for examining the competitiveness of markets or do
15 you have to look at a bigger market?

16 A. You have to look at the market as it
17 affects the state of Illinois.

18 Q. Fine. Now back to the PJM market. Supply
19 is dispatched on a regional basis; right?

20 A. That's right.

21 Q. Single security-constrained dispatched in
22 effect throughout the PJM footprint; right?

1 A. Well, that's the goal. But as some of your
2 witnesses have testified, when there are constraints
3 on the system, then the system tends to become zonal
4 or smaller, and then the prices will differ across
5 PJM, as they typically do on a day once the load
6 increases.

7 Q. To be clear, I am not asking you whether
8 the LMPs are all the same. I am saying PJM runs a
9 single capacity-constrained dispatch model.

10 A. That's right.

11 Q. And that model may show no constraints in
12 which case the LMPs would be the same or virtually
13 the same, or it may show constraints in which case
14 there will be price separation, but they are still
15 dispatched under a single model?

16 A. That's right.

17 Q. And that single model set the prices for
18 every node and zone in Illinois; right?

19 A. No, just northern Illinois.

20 Q. Absolutely true. I am very sorry.

21 That single model sets the prices for
22 all the nodes and zones in ComEd?

1 A. In ComEd's zone, yes, as defined by PJM.

2 Q. And that process is set out in a tariff
3 that PJM has on file at FERC; right?

4 A. That's right.

5 Q. Now, under that market structure,
6 generators bid and other sellers bid into the market;
7 right?

8 A. That's right.

9 Q. And those tariffs specify how they do that?

10 A. That's right. Now, you are referring to
11 the operating agreement, I believe.

12 Q. Yeah, the operating agreement. I am trying
13 not to descend that far.

14 A. That's the big document that specifies how
15 they will bid.

16 Q. Yes.

17 A. Just so we are talking about the same
18 thing.

19 Q. That's as far into those weeds as I am
20 going.

21 Now, if ComEd's cost of purchasing
22 energy in the auction were to be capped based on a

1 reserve price mechanism or some other means, based on
2 the production costs of units just in Illinois, would
3 you agree that that could very well result in a price
4 different than that allowed under that operating
5 agreement?

6 A. Well, I didn't propose that it be just
7 Illinois. But it would be different.

8 Q. Okay. And if I expand my question to say,
9 if it was based on the production cost of units
10 anywhere in PJM, that could also result in a price
11 different than allowed under that operating
12 agreement; right?

13 A. Yes.

14 Q. Let's talk about the Argonne Study for just
15 a couple minutes. If you could take a quick look at
16 lines 177 through 79 of your testimony, please?

17 A. Yes, I have that.

18 Q. Now, those production costs are not
19 measured production costs actually incurred by any
20 generator, are they?

21 A. Well, they are using the data available in
22 order to simulate what it would cost for those

1 generators to generate the price and be dispatched.

2 Q. So to summarize your answer, they are not
3 the actual measured production costs; they are what
4 the Argonne Report tried to simulate?

5 A. That's right. But these are based on
6 actual costs that are supplied to the federal
7 government.

8 Q. Well, the generators make certain reports
9 to the government; right?

10 A. That's right.

11 Q. And Argonne tried to simulate how the
12 various costs that they report would add up to costs
13 in a real operating environment; right?

14 A. That's correct.

15 Q. But that is their simulation of that; they
16 didn't go out and measure real generator costs;
17 right?

18 A. Not beyond the data that they collected
19 from others. Their data source is stated in the
20 report, data sources, rather.

21 Q. And you conducted no independent validation
22 or evaluation of the data or methodology they used;

1 you just accepted it; right?

2 A. That's correct.

3 Q. Now, there was some confusion yesterday
4 about ramp rates. And is it true that you were
5 unable to find anything in the report that specified
6 that ramp rates were considered?

7 A. That is correct. It didn't specify that.

8 Q. And let's for just a minute then talk about
9 the hourly market LMPs that come out of the Argonne
10 Report. Those are also a product of their
11 simulation; right?

12 A. That's correct.

13 Q. They are not LMPs that ever were charged in
14 any transaction; right?

15 A. That is correct, unlike the LMPs that I had
16 in Figure 1.

17 Q. Figure 1. And the zones that they refer to
18 are zones that in fact don't really exist; right?

19 A. Well, what they did was they, if I
20 understand correctly, that they aggregated the nodes
21 to their own zonal definition.

22 Q. And those zones that they aggregated are

1 not zones that actually exist in the PJM market
2 aggregated in that way; right?

3 A. Well, PJM was not the RTO at that time when
4 they began the study.

5 Q. That's a couple questions later. But is
6 the answer to my question yes?

7 A. Yes.

8 Q. And the data that they used in estimating
9 those LMPs is no newer than 2003; right?

10 A. That's correct, no newer.

11 Q. And amongst the things that have happened
12 since 2003 is the advent of PJM in northern Illinois;
13 is that correct?

14 A. That is correct.

15 Q. And the change of ownership and
16 construction of -- and change of operating
17 characteristics of various generating units?

18 A. That is correct.

19 Q. Now, you define a competitive price level
20 as one where, quote, no supplier or group of
21 suppliers can significantly raise and maintain the
22 market price through their own actions. And I am

1 quoting from Data Request 2.29, if you want to make
2 sure I have got it right. Is that correct?

3 A. I believe so.

4 Q. Now, is it not true that your testimony
5 recites no evidence that any supplier has done such a
6 thing? And I have asked that question carefully. So
7 if you don't understand it, I will be happy to repeat
8 it.

9 MS. HEDMAN: Could counsel please repeat the
10 question?

11 Q. Sure. I will make it even simpler. Does
12 your direct testimony recite any evidence that any
13 supplier has done that, i.e. the loaner in a group
14 significantly raised and maintained the market price
15 by their own actions?

16 A. The evidence that is in the testimony was
17 the fact that the production costs were considerably
18 below what we have seen in the market price that I
19 also provided.

20 Q. Other than the inference that you draw from
21 the difference between the production cost that you
22 estimate and the clearing price, your testimony

1 recites no evidence that suppliers or groups of
2 suppliers have raised and maintained, significantly
3 raised and maintained, the market price through their
4 own actions; isn't that correct?

5 A. Well, consistent with what I said in the
6 previous docket and here, that's correct. That was
7 my recommendation, that the Commission perform such
8 an analysis. And I still believe that.

9 Q. I am very sorry. I had to do it either
10 way. It is probably quicker if I ask a clarifying
11 question rather than read it back.

12 Is the answer to my question yes, that
13 your testimony contain no such evidence?

14 A. Not beyond what we just stated.

15 Q. Which is the inference you draw from that
16 spread?

17 A. That is correct.

18 Q. And is it also true that your testimony
19 identifies no specific anti-competitive behavior that
20 you have evidence that any supplier has engaged in?

21 A. Not in my testimony.

22 Q. Now, if you can pull Data Request 2.31 out,

1 it may speed the questioning, and I think this is
2 near the end.

3 JUDGE WALLACE: What number?

4 Q. 2.31.

5 A. 31?

6 Q. 2.31.

7 A. Yes, I have that.

8 Q. Now, you were asked in that data request
9 that if the wholesale market in which the Illinois
10 auction operates were determined to be workably
11 competitive, as you define it, could you identify any
12 reason why it wouldn't be an effective way of
13 procuring supply at reasonable prices.

14 And in your answer you first told me
15 that the wholesale market and the auction would have
16 to be determined to be competitive; right?

17 A. That's right.

18 Q. So let me ask it of you this way. Is it
19 true that if the wholesale market in much the auction
20 operates and the auction were determined to be
21 workably competitive, you have not in your testimony
22 or this data request identified any reason why it

1 would not be an effective way of procuring supply at
2 reasonable prices, have you?

3 A. Absent that analysis, no.

4 Q. In your testimony in the data request you
5 haven't; right?

6 A. I didn't identify, I don't believe, as I
7 stated here, that the Commission had done that.

8 Q. But it is a hypothetical?

9 A. Hypothetically.

10 Q. If it were true that the auction and the
11 market in which it operates is competitive, neither
12 your testimony nor your data request responses
13 identify any reason why it wouldn't be an effective
14 way of procuring supply at reasonable prices?

15 MS. HEDMAN: I am going to object to the
16 question. Mr. Rippie is asking the witness about
17 things that are beyond the scope of his testimony
18 admittedly, because as he says in the data request
19 and in the testimony, this particular issue isn't
20 addressed.

21 MR. RIPPIE: He makes a recommendation -- if I
22 may respond, he makes a recommendation to this

1 Commission as to how they should judge the
2 competitiveness of the auction and its effectiveness.
3 The purpose of this proceeding is to determine
4 whether or not there should be revisions.

5 It is true that the witness says the
6 data is lacking, but I am perfectly entitled to ask
7 him whether, if it turns out that this auction is
8 competitive and the market is competitive, there is
9 any reason why it couldn't generate supply at
10 reasonable prices, which is exactly what it is I am
11 asking him. That's well within the scope of his
12 testimony.

13 JUDGE WALLACE: Yes. The objection is
14 overruled. Go ahead.

15 BY MR. RIPPIE:

16 Q. Do you want me to ask it again?

17 A. Well, I would say just -- I will ask you a
18 question. Is this presuming that some analysis was
19 done by the Commission or somebody else that
20 determined that the market was in fact competitive
21 and then would the procurement process be an
22 appropriate means to supply customers?

1 Q. We are really close. I don't want to
2 engage in a debate about whether or not that
3 determination were proper. So I am just going to ask
4 you to -- I am asking the question as an if.

5 If by whatever means whoever makes
6 that determination makes them -- if it is the fact,
7 let me ask it that way, that the market in which the
8 auction operates were competitive and the auction
9 were competitive, does your testimony or your data
10 requests identify any reason why it wouldn't be an
11 effective way of procuring supply at reasonable
12 prices?

13 MS. HEDMAN: I am going to object again because
14 Mr. Rose's testimony, I mean, the question you are
15 really asking, is the design of the auction
16 acceptable to Mr. Rose?

17 MR. RIPPIE: Well, that's close to the question
18 I am asking. I am asking him if the markets turn out
19 to be competitive, if it is determined, if it is a
20 fact, I will ask it either way. But I am entitled to
21 an answer to my question of whether this expert
22 witness thinks the auction will work just fine if the

1 market and the auction are competitive.

2 MS. HEDMAN: Dr. Rose's testimony here does not
3 address the design of the auction. That is beyond
4 the scope of his testimony.

5 MR. RIPPIE: Well, he recommends reserve prices
6 in two different ways. And if that's beyond the
7 scope of his testimony, I have doubts about its
8 relevance, regardless.

9 JUDGE WALLACE: All right. I believe it is a
10 properly posed hypothetical, so the objection is
11 overruled.

12 BY MR. RIPPIE:

13 Q. Do you want me to try one more time?

14 A. Sure, I like hearing you talk.

15 Q. My wife would say that I like hearing me
16 talk, too. And I never argue with my wife.

17 If it is determined that the wholesale
18 market in which the Illinois auction operates is
19 competitive, workably competitive, and the auction is
20 workably competitive, does either your testimony or
21 data request responses identify any reason why it
22 wouldn't be an effective way of procuring supply at

1 reasonable prices?

2 A. Subject to my own interpretation on that
3 analysis, no.

4 Q. And we have defined workably competitive;
5 right?

6 A. Right. And any hypothetical analysis would
7 have to be reviewed.

8 MR. RIPPPIE: Okay. Thank you, Dr. Rose.

9 THE WITNESS: Of both the auction and the
10 wholesale market.

11 MR. RIPPPIE: Thank you. That's all I have.

12 JUDGE WALLACE: Mr. Feeley?

13 MR. FEELEY: Staff has no cross.

14 JUDGE WALLACE: Mr. McGuire?

15 MR. MCGUIRE: Based on what we have just heard
16 and our agreement that certain data requests would be
17 put into the record, we have no cross.

18 JUDGE WALLACE: All right. Are you prepared to
19 submit them now or do you want to wait?

20 MR. MCGUIRE: I think we could mark them and
21 then submit them now.

22 JUDGE WALLACE: You don't have extra copies.

1 MR. McGUIRE: We do. Courtesy of Mr. Rippie we
2 happen to have them, so.

3 JUDGE WALLACE: All right. Would you identify
4 those, please? There will be -- well, how do you
5 want to label them?

6 MR. McGUIRE: I think we would label them EMMT
7 & Midwest Generation, Midwest Gen, Cross Exam Exhibit
8 Number 1 which would be ComEd/AG 2.12.

9 JUDGE WALLACE: All right. If you would hand
10 that to the court reporter to mark.

11 (Whereupon EMMT & Midwest Gen
12 Cross Exhibit 1 was marked for
13 purposes of identification as of
14 this date.)

15 MR. McGUIRE: EMMT & Midwest Gen Cross Exam
16 Exhibit Number 2 would be ComEd/AG 2.15.

17 (Whereupon EMMT & Midwest Gen
18 Cross Exhibit 2 was marked for
19 purposes of identification as of
20 this date.)

21 MR. McGUIRE: And then EMMT & Midwest Gen Cross
22 Exam Exhibit Number 3 would be ComEd/AG 2.26.

1 (Whereupon EMMT & Midwest Gen
2 Cross Exhibit 3 was marked for
3 purposes of identification as of
4 this date.)

5 MR. McGUIRE: And pursuant to our
6 off-the-record conversation with the AG, I would move
7 those into evidence.

8 JUDGE WALLACE: All right. EMMT & Midwest Gen
9 Cross Exhibits 1, 2 and 3 have been offered. Is
10 there any objection? Hearing none, those are
11 admitted into the record.

12 (Whereupon EMMT & Midwest Gen
13 Cross Exhibits 1, 2 and 3 were
14 admitted into evidence.)

15 JUDGE WALLACE: That's all for you, Mr.
16 McGuire?

17 MR. McGUIRE: Yes, thank you.

18 JUDGE WALLACE: Redirect?

19 MS. HEDMAN: Yes, Your Honor.

20 JUDGE WALLACE: All right.

21

22

1 REDIRECT EXAMINATION

2 BY MS. HEDMAN:

3 Q. Dr. Rose, Mr. Rippie asked you whether any
4 revisions to the rider or the order or the auction
5 rules would be required in order for the Commission
6 to consider the benchmarks that you proposed. Do you
7 recall that question?

8 A. Yes.

9 Q. And you indicated -- did you indicate that
10 no such revisions would be necessary?

11 A. Well, he didn't -- he specified in the
12 procurement. I took that meaning in the general way
13 of whether or not some similar kind of procurement
14 may be a way, given this hypothetical that markets
15 had been declared competitive, if that would be a
16 means to serve the customers.

17 Q. I am going back to the very beginning of
18 his questioning where he was asking about whether or
19 not those items would need to be revised. Let me ask
20 you a question as a follow-up.

21 Do those auction rules and riders and
22 tariffs currently require the Commission to consider

1 the benchmarks that you propose?

2 A. Currently, no.

3 Q. And absent revisions, is there any
4 guarantee that the ICC would compare the auction
5 clearing price with wholesale market prices and
6 production costs?

7 A. There is no guarantee.

8 Q. Now, Mr. Rippie asked you whether or not
9 you independently verified the production cost data
10 in the Argonne Study; is that correct?

11 A. That's correct.

12 Q. Do you have any reason to believe that the
13 production cost data reported to the Energy
14 Information Administration by the generators would be
15 inaccurate?

16 A. No, I have no reasonable to believe that.

17 Q. And that's the production cost data that
18 the Argonne Study used; isn't that correct?

19 A. They used several different federal
20 sources, that is correct, from the EIA and the
21 Federal Regulatory Commission.

22 Q. Now, Mr. Rippie asked you several questions

1 about whether in your testimony or in the data
2 requests you offer any evidence of instances of
3 anti-competitive behavior in PJM; is that correct?

4 A. He didn't phrase it quite that way. I
5 think he asked if there was any of that in my
6 testimony, I believe was his question.

7 Q. In your testimony or in the responses to
8 the data requests?

9 A. That's right.

10 Q. And I believe you answered that there were
11 no such -- that no specific anti-competitive behavior
12 was identified in either the data request nor your
13 testimony?

14 A. Beyond the evidence, which I believe
15 Mr. Rippie agreed with, that there was a difference
16 between the production cost and the market price.

17 Q. And does your failure to point out any
18 specific evidence of anti-competitive behavior in
19 your testimony and in these data requests indicate
20 that you have concluded that no such anti-competitive
21 behavior is occurring in PJM?

22 A. I have not concluded that.

1 Q. And finally, Mr. Rippie asked you whether,
2 if hypothetically the PJM wholesale electricity
3 market were a competitive market and if
4 hypothetically the auction function in a competitive
5 fashion -- whether you have identified in your
6 testimony anything that would indicate that that
7 auction would -- any objections to the results of
8 that auction; is that correct?

9 A. That's correct.

10 Q. And I believe you indicated that you hadn't
11 identified any such issues in your testimony?

12 A. Not in my testimony.

13 Q. Does that mean that you think that under
14 those circumstances, of a competitive auction and a
15 competitive market, that a uniform price reverse
16 auction would produce the lowest price for
17 electricity?

18 A. Not necessarily.

19 MS. HEDMAN: Thank you. That's all.

20 JUDGE WALLACE: Mr. Rippie, any recross?

21 MR. RIPPIE: With some trepidation I think I
22 have one. It is, I hope, clarification.

1 RECROSS EXAMINATION

2 BY MR. RIPPIE:

3 Q. Dr. Rose, with respect to the use of the
4 EIA and FERC unit cost data, the Argonne Study did
5 more than just parrot that data back; right? It had
6 to calculate which units would be operating at which
7 time and how they would contribute to the aggregate
8 cost?

9 A. Using those data sources, that is correct.

10 Q. So those data sources provided information
11 on raw costs and then the Argonne simulation told the
12 investigators how to derive the cost of the units
13 that were actually running from it?

14 A. That is my understanding.

15 MR. RIPPIE: Thank you.

16 JUDGE WALLACE: Thank you, Dr. Rose. You may
17 step down. And we can stall for another 15 minutes
18 or we can break now.

19 Let's take an hour and come back.

20 Thank you.

21 (Whereupon the hearing was in
22 recess until 1:45 p.m.)

1 AFTERNOON SESSION

2 JUDGE WALLACE: Let's go back on the record.

3 Are you ready to proceed, Ms. McKibbin?

4 MS. McKIBBIN: Yes, Your Honor. All parties
5 have waived cross examination of CUB witness Jeff
6 Crandall, so I would like to admit his testimony by
7 affidavit.

8 Mr. Crandall prepared direct testimony
9 in this docket which was filed on e-Docket on March
10 15. That testimony is marked as CUB Exhibit 2.0 with
11 attached Exhibits 2.01 through and including 2.06.
12 And I have an affidavit, I have given you copies,
13 from Mr. Crandall attesting to the veracity of his
14 testimony. The affidavit is ready to be filed on
15 e-Docket. I remarked it with CUB Exhibit 4.0; is
16 that correct?

17 JUDGE WALLACE: That's fine, yes.

18 MS. McKIBBIN: So the Citizens Utility Board
19 moves to admit into evidence the direct testimony of
20 Jeff Crandall marked as Exhibit 2.0 and attached
21 Exhibits 2.1 through and including 2.06 as filed on
22 e-Docket March 15, 2007.

1 JUDGE WALLACE: And are you moving CUB.4.0?

2 MS. McKIBBIN: Yes, CUB 4.0 as well, the
3 affidavit of Mr. Crandall.

4 JUDGE WALLACE: Is there any objection?

5 CUB Exhibit 2.0, 2.01 through 2.06 and
6 CUB Exhibit 4.0 are admitted into the record.

7 (Whereupon CUB Exhibits 2.0,
8 2.01, 2.02, 2.03, 2.04, 2.05,
9 2.06 and 4.0 were admitted into
10 evidence.)

11 MS. McKIBBIN: Now CUB calls Christopher C.
12 Thomas.

13 CHRISTOPHER C. THOMAS
14 called as a witness on behalf of the Citizens Utility
15 Board, having been first duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. McKIBBIN:

19 Q. Mr. Thomas, please state your name and
20 business address for the record.

21 A. My name is Christopher C. Thomas. My
22 business address is 208 South LaSalle Street, Suite

1 1760, Chicago, Illinois 60604.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. I am the Director of Policy for the
5 Citizens Utility Board.

6 Q. Have you prepared testimony on behalf of
7 the Citizens Utility Board in this proceeding?

8 A. I have.

9 Q. And do you have a copy with you of CUB
10 Exhibit 1.0 with the corrections that were filed on
11 e-Docket on April 20, 2007?

12 A. I do.

13 Q. Do you have a copy of the attachment to CUB
14 Exhibit 1.0 numbered 1.01 and filed on e-Docket on
15 March 15, 2007?

16 A. Yes.

17 Q. Do you have a copy of CUB Exhibit 3.0, it
18 does not have an attachment, and it was filed on
19 e-Docket on April 6?

20 A. Yes.

21 Q. Do you have any corrections to make to this
22 testimony?

1 A. I have one correction to the corrected
2 direct, Exhibit 1.0. On 47 which is on page 2 there
3 is a word "approved." That word should be
4 "improved." So that sentence should read, "Although
5 CUB continues to believe the full requirement auction
6 should be abandoned, if the Commission chooses to
7 condition with it, the adoption of these
8 recommendations will improve the outcome for
9 consumers."

10 Q. And with these corrections are these
11 documents true and correct copies of the direct
12 testimony you prepared on behalf of CUB?

13 A. Yes.

14 MS. McKIBBIN: At this time I would move to
15 enter CUB Exhibit 1.0 Corrected, the attachment CUB
16 Exhibit 1.01 and CUB Exhibit 3.0 into evidence.

17 JUDGE WALLACE: All right. And you will file a
18 corrected copy of 1.0?.

19 MS. McKIBBIN: Yes.

20 JUDGE WALLACE: All right. Thank you.

21 Any objection? CUB Exhibits 1.0, 1.01
22 and 3.0 are admitted.

1 (Whereupon CUB Exhibits 1.0,
2 1.01 and 3.0 were admitted into
3 evidence.)

4 MS. McKIBBIN: Thank you, Your Honor. We
5 tender the witness for cross examination.

6 JUDGE WALLACE: All right. We have got a few
7 minutes for Mr. Thomas here. Who would like to start
8 off? Mr. Fitzhenry?

9 CROSS EXAMINATION

10 BY MR. FITZHENRY:

11 Q. Good afternoon, Mr. Thomas.

12 A. Good afternoon, Mr. Fitzhenry.

13 Q. Let me ask you to turn to page 11 of your
14 corrected direct testimony, if you would?

15 A. Okay.

16 Q. And there beginning on line 312 and
17 continuing through a portion of page 12 you speak to
18 real time pricing, do you not?

19 A. I do.

20 Q. And you are familiar with the Ameren
21 Illinois Utilities recently filed Rider Price
22 Response Program?

1 A. I am.

2 Q. In fact, you filed testimony in those
3 dockets, Dockets 06-0691 through 06-0693?

4 A. Yes, sir.

5 Q. Your testimony was largely in support of
6 Utilities' Rider PRP?

7 A. It was.

8 Q. And quoting from your testimony, I will be
9 happy to show you a copy of your testimony, so you
10 will be sure that I am correct in reading the
11 statement out of your testimony.

12 (Whereupon the document was
13 presented to the Witness.)

14 If you would turn to page 5?

15 A. Sure.

16 Q. There at lines 92 through 95 you had
17 testified, "CUB used Ameren's tariff as a necessary
18 and important step toward the development of
19 substantial demand response that could provide the
20 discipline lacking in the markets today"?

21 A. Yes.

22 Q. Is that still your view today?

1 A. It is.

2 Q. Thank you. You would agree with me, would
3 you not, that the introduction of energy efficiency
4 and demand response programs as part of the auction
5 process, as you propose, is in itself not the only
6 means by which to produce the benefits from these
7 programs as you discuss in your testimonies?

8 A. That's correct. But also I would add this,
9 that our proposal is an attempt to remove barriers
10 that exist in the general process.

11 Q. Right. But energy efficiency programs and
12 demand response programs are not unique to the
13 auction process itself?

14 A. That is correct.

15 Q. Now, again I should have asked this
16 question regarding Rider PRP, but let's tie it to
17 your testimony. If you would look at line 152, the
18 corrected direct testimony, and there your response
19 to a question indicates I guess energy efficiency
20 demand response programs are limited in scale and
21 scope; right?

22 A. Yes.

1 Q. And, again, it is your understanding that
2 Rider PRP is available to every residential customer
3 in the Ameren Illinois Utilities' service
4 territories?

5 A. That is correct.

6 Q. Now speaking to real time pricing, it is my
7 understanding that the Rider PRP and these kind of
8 programs tend to inform customers how they can best
9 change their energy usage patterns in response to
10 price?

11 A. Yes, that's one tool that customers have to
12 make an informed decision, that is correct.

13 Q. So, for example, through times of peak
14 demand when prices are high, these customers may
15 change their consumption pattern and reduce their
16 energy consumption?

17 A. And their overall bills; right.

18 Q. And, conversely, during times of non-peak
19 demand or when prices are low, they might use energy
20 differently because of that price response?

21 A. That is correct.

22 Q. Now, it is my understanding, and correct me

1 if I am wrong, that suppliers in the auction take
2 into account the load profiles of those customers
3 taking service of a particular product?

4 A. That's my understanding as well.

5 Q. So it is generally thought to be true that
6 price for power and energy is more expensive at peak
7 than other times?

8 A. Yes.

9 Q. So we all hope that if RTP is successful,
10 consumers actually consume power differently, that
11 this benefit, if you will, will be reflected in the
12 supplier's bid?

13 A. Ideally, yes.

14 Q. Now let's go to page 4 of your corrected
15 direct testimony at lines 92 through 94.

16 A. Sure.

17 Q. Now there you indicate that at a later
18 prudence review proceeding that CUB will demonstrate
19 that the decision to procure full requirements supply
20 to the auction was an imprudent decision made by
21 utility management?

22 A. Yes.

1 Q. Is that still your testimony today?

2 A. Yes.

3 Q. Now, you understand, do you not, that
4 what's called the auction procurement method dockets,
5 I think you were a witness perhaps, that the
6 Commission approved the declining price auction
7 method as the preferred method for buying power?

8 A. I not a witness, but I do understand that.

9 Q. Do you have some belief or understanding as
10 to whether or not the utilities did not procure power
11 in the market using that method that was approved by
12 the Commission?

13 A. Can you ask me that question one more time?

14 Q. Right. You understand that out of that
15 docket the Commission approved a particular method by
16 which the utilities would buy power in the market for
17 their customers?

18 A. That is correct.

19 Q. Do you have some belief or opinion that the
20 utilities did not abide by the Commission's
21 direction?

22 A. I do not.

1 Q. But you understand that the Commission
2 declared the results of the auction for the fixed
3 price product to be successful?

4 A. They did.

5 Q. Are you aware that the utilities in any way
6 violated any of the Commission's rules or protocol
7 that were approved in the auction docket, vis-a-vis
8 the auction and buying power in the market?

9 A. As I sit here I am not.

10 Q. So then what's the basis for your opinion
11 that the utilities were imprudent?

12 A. The basis for my opinion is that the
13 auction results are not lowest cost, as I have said
14 in my testimony. I am not an attorney so I am not
15 speaking to the legal meaning of the word "prudence."

16 Q. I certainly wouldn't ask you those kind of
17 questions. What was the lowest cost that should have
18 been achieved from the auction that was held in
19 September 2006?

20 A. I think there are other resources
21 available, as CUB's testimony demonstrates. The
22 testimony of Mr. Crandall and I go to the point that

1 there are lower demand side resources available that
2 should have been considered by the company.

3 Q. And do you recall whether or not CUB
4 offered evidence of that nature in the original
5 auction procurement docket?

6 A. We did not. Our focus there was on
7 opposing the auction process.

8 Q. So now you would hold the utilities to be
9 imprudent based on information being presented in
10 this information -- I'm sorry, based on information
11 presented in this docket vis-a-vis the September 2006
12 auction?

13 A. This information was generally available to
14 the utilities at the time they ran the auction.

15 Q. How do you know that?

16 A. These studies, a lot of these studies, were
17 released several years ago.

18 Q. That wasn't my question. How do you know
19 that the utilities were aware of all the studies that
20 Mr. Crandall refers to in his testimony?

21 A. I am not a hundred percent certain, sir.

22 Q. Are you one percent certain?

1 A. This information was generally available,
2 and I would suspect the utilities should have known
3 about that.

4 Q. You suspect that the utilities should have
5 known about it?

6 A. That is correct.

7 Q. But, nonetheless, even though the utilities
8 abided by what the Commission directed in the order,
9 even though the Commission itself declared the
10 results to be successful, only but for the
11 information being provided in this docket, you would
12 now find -- not asking for a legal conclusion -- that
13 the utilities would be found imprudent in a prudence
14 review?

15 A. For not procuring the lowest cost power for
16 the customers, yes.

17 Q. And you don't know what the lowest cost
18 power is today?

19 A. I haven't done the analysis of what it
20 actually would be.

21 Q. When will you begin the analysis?

22 A. When we begin to gather information in the

1 prudence review.

2 Q. So information that we will learn about in
3 the prudence review will determine whether or not the
4 utilities were imprudent in September 2006; is that
5 your testimony?

6 A. Absolutely.

7 MR. FITZHENRY: That's all the questions I
8 have.

9 JUDGE WALLACE: Ms. Fonner?

10 MS. FONNER: Yes, Your Honor, there are some
11 data request responses that ComEd would offer into
12 evidence with the stipulation of CUB, and there are
13 three of them and I will do them altogether, if you
14 wouldn't mind.

15 Data request response ComEd-CUB 2.05
16 will be ComEd Cross Exhibit 1. Data request response
17 ComEd-CUB 2.07 is ComEd Cross Exhibit 2. Data
18 request response ComEd-CUB 2.13 and that's ComEd
19 Cross Exhibit 3.

20 (Whereupon ComEd Cross Exhibits
21 1, 2 and 3 was marked for
22 purposes of identification as of

1 this date.)

2 JUDGE WALLACE: All right. Are there any
3 objections to ComEd Cross Exhibits 1, 2 and 3?

4 MS. McKIBBIN: No objection, Your Honor.

5 JUDGE WALLACE: All right. ComEd Cross
6 Exhibits 1, 2 and 3 are admitted.

7 (Whereupon ComEd Cross Exhibits
8 1, 2 and 3 were admitted into
9 evidence.)

10 CROSS EXAMINATION

11 BY MS. FONNER:

12 Q. Good afternoon, Mr. Thomas.

13 A. Good afternoon.

14 Q. I have just a couple questions for you.
15 Could you turn to page 4, line 84, of your testimony?

16 A. Yes.

17 Q. The sentence that begins on line 84 is,
18 "There is no easy way to verify that the price of
19 power procured through the auction is reasonable;"
20 correct?

21 A. That is correct.

22 Q. And the sentence that immediately followed

1 in your testimony as originally filed was stricken in
2 your corrected testimony; correct?

3 A. That is correct.

4 Q. That original sentence was, "This is
5 because there are no similar products out there with
6 which to compare the results of the auction;"
7 correct?

8 A. That was the original sentence.

9 Q. If the phrase "load-following" were added
10 to that sentence so that the sentence read, "This is
11 because there are no similar load-following products
12 elsewhere with which to compare the results of the
13 auction;" would that sentence be true?

14 A. That sentence in and of itself would be
15 true, yes. I am not sure if its context within the
16 paragraph would be appropriate, but that sentence
17 itself would be true.

18 Q. When you talk about the context within the
19 paragraph, you are referring, I believe, not to the
20 fact that it would no longer go with the first
21 sentence of the paragraph?

22 A. It wouldn't go with the third sentence of

1 the paragraph. That was not the fact that was
2 recognized in Staff's report.

3 Q. So you agree that the difficulty in
4 verifying prices is based on the fact that there are
5 no similar load following products elsewhere?

6 A. That is correct.

7 Q. And your clarification was simply not to
8 infer that Staff's report suggested that?

9 A. That is correct.

10 MS. FONNER: That's all I have. Thank you.

11 JUDGE WALLACE: Anyone else? Mr. Feeley?

12 CROSS EXAMINATION

13 BY MR. FEELEY:

14 Q. Good afternoon, Mr. Thomas. I have some
15 questions for you now.

16 A. Good afternoon, Mr. Feeley.

17 Q. Is it fair to say that it is your position
18 that it is cheaper to reduce demand through
19 investment and demand response and energy efficiency
20 when taking into account all investment costs
21 necessary than it is to purchase additional
22 electricity in the wholesale market?

1 A. That is CUB's position, yes, sir.

2 Q. And do you have in front of you your
3 response to ComEd Data Request 2.03?

4 A. Yes, I do.

5 Q. And in response to that data request is it
6 true you indicated that you base that assessment on a
7 couple of things?

8 A. Yes, sir.

9 Q. And the first was you quoted from the
10 National Action Plan for Energy Efficiency, pages 1
11 to 3, you quoted the following, quote, If all the
12 designed energy efficiency programs are saving energy
13 at an average cost of one-half of the typical cost of
14 new power sources and about one-third of the cost of
15 providing natural gas, when integrated into a long
16 term energy resource plan, energy efficiency could
17 help defer investments in new plants and lower the
18 total energy system cost. Is that the first part?

19 A. Yes, sir.

20 Q. And then also you base that assessment on
21 the ACEEE's report, five years in an examination of
22 the first half of public benefits energy efficiency

1 policies?

2 A. Yes, which is provided in Mr. Crandall's
3 testimony.

4 Q. And that was provided as Attachment 3 to
5 Mr. Crandall's response to ComEd DR 1.04?

6 A. Yes.

7 Q. With regard to the National Action Plan for
8 Energy Efficiency that you cited to in that DR
9 response, in reporting the average cost of saving
10 energy through well-designed programs do you know how
11 these costs were measured?

12 A. If you look at the report itself, Mr.
13 Feeley, I think it is explained in the footnote. It
14 is based on new power costs and gas prices in 2015
15 compared to -- it is actually Footnote 4 on page 1.3
16 -- compared to electric and gas programs and leading
17 energy programs many of which are discussed in the
18 report.

19 Q. Do you know if the authors of the report
20 measured them, those costs, themselves?

21 A. I don't believe that they did, but I am not
22 a hundred percent sure.

1 Q. And can you assure the Commission that all
2 the expenditures that should have been included were
3 included?

4 A. Can you ask me that question one more time?

5 Q. Can you assure the Commission that all the
6 expenditures that should have been included were
7 included?

8 A. Not having reviewed each individual pieces
9 of information, I can't do that. All I can rely on
10 is the exclusions made by the National Action Plan.

11 Q. Do you have page 6-22 of that same report
12 in front of you?

13 A. Yes, I do.

14 Q. In that same report from the National
15 Action Plan for Energy Efficiency it states the
16 following, that "Most of the organizations reviewed
17 use either the total resource costs (TRC), the
18 societal or program administrator test, the utility
19 test to screen measures." Do you see that?

20 A. Yes.

21 Q. What's the difference between those tests?

22 A. I think they are described on that page.

1 Give me a moment to review and I will --

2 JUDGE JONES: While the witness is looking,
3 what are you reading from again?

4 MR. FEELEY: I am reading from page 6-22 of the
5 National Action Plan for Energy Efficiency. This is
6 one of the documents that he relied upon for his
7 position in my opening question to him.

8 JUDGE JONES: Is there a date on the cover
9 sheet of that, of the plan, or do you just have
10 that --

11 MR. FEELEY: I provided it to Mr. Thomas and
12 counsel, just the pages from that report that I was
13 looking at. It has 6-22 on the bottom. It is the
14 third page of that stapled document that I handed
15 you.

16 JUDGE JONES: Thank you.

17 BY MR. FEELEY:

18 Q. Have you had a chance to review that?

19 A. Yes, I have, and they are summarized on
20 that page, Mr. Feeley. The total resource cost is
21 the total cost and benefits of the program. The
22 societal test is similar but includes other societal

1 benefits such as environmental impacts that, as I
2 understand it, may not be covered by the actual costs
3 and benefits of the program in major monetary terms.
4 And then there is the utility program administrator
5 test which assesses the benefits and costs from the
6 administrator's perspective, and the participant test
7 which assesses benefits and costs to the
8 participants.

9 Q. So what's the difference between the total
10 resource costs and the program administrator tests?

11 A. The total resource costs appears to look at
12 the total costs and benefits of the program. And you
13 asked about the administrator's test?

14 Q. Uh-huh.

15 A. The administrator's test looks at only the
16 benefits and costs from the administrator's
17 perspective which doesn't include avoided fuel and
18 operating capacity costs -- or, excuse me, which does
19 include the benefits of avoided fuel and operating
20 capacity costs compared to the administrative costs.

21 Q. And that quote that I read to you said most
22 of the organizations reviewed used either one of

1 three tests. Do you know which organizations use the
2 total resource cost test?

3 A. Give me a second. I will grab the report
4 here, make sure I am not missing something. As I sit
5 here I can't recall off the top of my head. But give
6 me a second.

7 (Pause.)

8 Mr. Feeley, my review here shows that at
9 least in this section the authors had not cited
10 specifically which of the organizations used which
11 specific tests.

12 Q. And do you know on your own?

13 A. I don't.

14 Q. I refer your attention to the ACEEE report
15 that was referenced in the response to ComEd 2.02.
16 Do you have that report in front of you? Or I handed
17 you a specific page from that. Do you have that in
18 front of you?

19 A. I do.

20 Q. And it is page vii?

21 A. I have it.

22 Q. Do you see just the paragraph above the

1 conclusion on that page? Do you see that paragraph
2 there?

3 A. Yes.

4 Q. The reports of range of bi-cycle costs for
5 energy efficiency efforts in the range of .023 to
6 .044 per kWh, do you see that?

7 A. I do.

8 Q. But then it states that these are data
9 based on often differing methodologies and
10 assumptions across the states, and that in this
11 project we did not attempt to reconcile these
12 inconsistencies or conduct our own cost effective
13 analysis. Do you see that in that report?

14 A. Yes.

15 Q. Did you yourself conduct your own cost
16 effective analysis?

17 A. I did not.

18 Q. Did you attempt to reconcile the
19 inconsistencies referenced in the ACEEE's report,
20 Executive Summary, that I just quoted before?

21 A. I did not.

22 Q. Can you explain the differences between the

1 methodologies and assumptions across the states
2 referenced in that report?

3 A. Not succinctly. There are a wide variety
4 of methodologies used most likely in the discussion
5 we had with the NAP, the National Action Plan. The
6 states have always looked at these things very
7 differently and used different tests.

8 Q. But are you able to explain the
9 differences?

10 A. Between all of them, no, I am not, sir.

11 Q. And you are aware that that report, that
12 was published in April of 2004; correct?

13 A. That is correct.

14 Q. And with respect to the report of bi-cycled
15 costs for energy efficiency efforts of .023 to .044
16 per kWh, over what period of time were the
17 investments made?

18 A. I don't know. This was a five-year study,
19 the ACEEE report. I mean, the report is five years
20 in. And it is reviewing investments that have been
21 made over a period of the last five years at a
22 minimum. But I can't tell you the specifics for the

1 ends of the range.

2 Q. Would there have been inflation since the
3 time that the investments were made or any of the
4 expenditures included in the report?

5 A. Likely.

6 Q. Go to your direct testimony. I think it is
7 around line 188 at the beginning of your answer
8 there. You are discussing demand response and then
9 below the definition you state the following:
10 "Demand response refers to actions that customers can
11 take to change their energy usage in response to
12 prices. The actions include reduce consumption
13 during high price times and changes in behavior that
14 shift usage to lower price times. Both actions
15 result in less demand during the peak times when
16 prices are high and the most volatile." Do you see
17 that?

18 A. Yes.

19 Q. Okay. It is your position that ComEd and
20 Ameren should do more to solicit demand response;
21 correct?

22 A. That is correct.

1 Q. And on page 17 of your testimony, in your
2 testimony you discuss that discipline is lacking in
3 the wholesale markets. Do you see that?

4 A. Yes, sir, on page 16.

5 Q. I'm sorry.

6 A. Lines 484 and 485.

7 Q. Okay. And do you have your response to
8 ComEd Data Request 2.17? I handed that out to you
9 before.

10 A. Yes, sir, I have it.

11 Q. Have you had a chance to look that over?

12 A. I have.

13 Q. And that request asks you to provide
14 evidence that there is discipline lacking in the
15 wholesale markets. When you made that statement in
16 your testimony, you were talking about price
17 discipline; is that correct?

18 A. That is correct.

19 Q. And your statement that price discipline is
20 lacking was based in part on the MVER working paper
21 by -- working paper by Borenstein and Holland called
22 On the Efficiency of Competitive Electricity Markets

1 with Time and Varying Retail Prices; is that correct?

2 A. Among other things, yes.

3 JUDGE JONES: Could you spell that for our
4 court reporter if you are not going to put that in.

5 MR. FEELEY: Sure, Borenstein,
6 B-O-R-E-N-S-T-E-I-N, and Holland, H-O-L-L-A-N-D.

7 JUDGE JONES: Thank you.

8 BY MR. FEELEY:

9 Q. Do you have page 26 of that article by
10 Borenstein and Holland?

11 A. I do.

12 Q. Do you see the first full paragraph on many
13 economists?

14 A. Yes.

15 Q. And at page 26 of that report it states
16 that "Many economists and some industry participants
17 have argued strongly for increasing the proportion of
18 customers on RTP. We have shown that while
19 increasing the proportion of customers on RTP is
20 likely to increase market efficiency, exceptions are
21 possible, at least for some (locally) extreme shapes
22 of demand functions. We have also demonstrated that

1 increases in the share of customers on RTP can harm
2 customers who already are on RTP while benefitting
3 those who remain on flat rates. The net effect of
4 such a change on the level of equilibrium capacity we
5 demonstrate is ambiguous."

6 Do you see that in that article by
7 those authors?

8 A. I do. And also the footnote, Mr. Feeley, I
9 think is relevant there.

10 Q. I will ask you the question, if you want to
11 answer.

12 A. Okay.

13 Q. In your testimony with respect to demand
14 response did you take into account the Borenstein and
15 Holland demonstration that increasing the proportion
16 of customers on RTP does not lead to an increase in
17 market efficiency for some extreme shapes of demand
18 functions?

19 A. Could you ask me that one more time?

20 Q. Sure. In your testimony with respect to
21 demand response did you take into account the
22 Borenstein and Holland demonstration that increasing

1 the proportion of customers on RTP does not lead to
2 an increase in market efficiency for some extreme
3 shapes of demand functions?

4 A. The Borenstein and Holland findings did not
5 deter my recommendation that ComEd and Ameren pursue
6 more aggressive demand response.

7 Q. So did you consider what they said and you
8 disregarded it?

9 A. I considered what they said, and I think
10 that their finding in the previous sentence that
11 increasing the proportion of customers on RTP is
12 likely to increase market efficiency was more
13 relevant to our analysis, especially given their
14 restrictive assumptions, than their finding that
15 there were some extremities that were outliers.

16 Q. So did you take into account their
17 demonstration that increases in the share of
18 customers on RTP can harm customers who are already
19 on RTP?

20 A. Yes.

21 Q. And did you take into account the
22 demonstration that the net effect of such a change on

1 the level of equilibrium capacity is ambiguous?

2 A. Yeah, that's correct. And I think those
3 findings are based on the Footnote 43, as I indicated
4 before. There are a number of very restrictive
5 assumptions there. Although the authors do realize
6 that they -- they do state that they think relaxing
7 those assumptions won't have a huge impact on their
8 outcome, I don't think that that's a reason to deter
9 the Commission from pursuing more aggressive demand
10 response.

11 MR. FEELEY: Thank you, Mr. Thomas. That's all
12 I have.

13 THE WITNESS: Thank you.

14 JUDGE WALLACE: Ms. Hedman, do you have some
15 cross?

16 MS. HEDMAN: I do, very brief.

17 CROSS EXAMINATION

18 BY MS. HEDMAN:

19 Q. Good afternoon, Mr. Thomas.

20 A. Good afternoon, Ms. Hedman.

21 Q. I would like you to refer to page 4 of your
22 testimony in which you discuss the difficulty of

1 determining whether prices produced by the auction
2 are reasonable.

3 A. Yes.

4 Q. Are you familiar with the benchmarks that
5 Dr. Rose has proposed in this proceeding?

6 A. Generally, yes.

7 Q. In your view would using those
8 benchmarks -- would those benchmarks be useful and
9 factors to consider when assessing the reasonableness
10 of a price in the auction?

11 A. Sure, yes. I think all available data
12 would be very useful for the Commission to consider
13 when they do evaluate the reasonableness of the
14 auction data.

15 MS. HEDMAN: Thank you.

16 JUDGE WALLACE: Mr. Townsend?

17 MR. TOWNSEND: No cross, thank you.

18 JUDGE WALLACE: Okay. You sure. You put down
19 some minutes.

20 MR. TOWNSEND: I am sure.

21 JUDGE WALLACE: Any redirect?

22 MS. McKIBBIN: No, no redirect, Your Honor.

1 JUDGE WALLACE: Thank you, Mr. Thomas. You may
2 step down.

3 (Witness excused.)

4 JUDGE WALLACE: Off the record.

5 (Whereupon there was then had an
6 off-the-record discussion.)

7 JUDGE WALLACE: Back on the record. Mr.
8 Rippie?

9 MR. RIPPIE: Your Honor, not that I would ever
10 speak for the Ameren Utilities, but ComEd and the
11 Ameren Utilities jointly have sponsored the testimony
12 of Dr. LaCasse and she is the next witness on the
13 schedule.

14 DR. CHANTALE LA CASSE
15 called as a witness on behalf of Commonwealth Edison
16 Company and Ameren Illinois Utilities, having been
17 first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. RIPPIE:

21 Q. Good afternoon, Dr. LaCasse. Since I saw
22 that you have already handed your card to the court

1 reporter, I will dispense with having you spell your
2 name.

3 A. Thank you.

4 Q. Do you have before you a document that has
5 been marked Auction Manager Exhibit 1.0 together with
6 ten attachments thereto?

7 A. I do.

8 Q. Is Auction Manager Exhibit 1.0 a copy of
9 the direct testimony that has been prepared by you or
10 under your direction and control for submission to
11 the Illinois Commerce Commission in this docket?

12 A. Yes, it is.

13 Q. And are the attachments marked Exhibits
14 1.01 through 1.10 the attachments referred to in your
15 narrative direct testimony?

16 A. Yes, they are.

17 MR. RIPPKE: Your Honors, for the record that
18 material was filed on March 15, 2007, on e-Docket and
19 it bears e-Docket serial number 79402.

20 Q. Dr. LaCasse, do you also have before you a
21 document that has been marked Auction Manager Exhibit
22 2.0?

1 A. Yes, I do.

2 Q. And is that your rebuttal testimony
3 prepared by you or under your direction and control,
4 also for submission to the Commission in this docket?

5 A. Yes, it is.

6 MR. RIPPIE: Your Honors, that document was
7 filed on e-Docket on April 6, 2007, and bears
8 e-Docket number 80152.

9 Q. Are there any additions or corrections, Dr.
10 LaCasse, that you wish to make to any of those
11 exhibits?

12 A. No, there are not.

13 Q. If I were to ask you the same questions
14 that appear in Exhibits 1.0 and 2.0 today or if
15 Ms. Earl were to ask you those questions, would you
16 in fact give the same answers today?

17 A. Yes, I would.

18 MR. RIPPIE: I think we both at this point move
19 those exhibits, constituting Auction Manager Exhibits
20 1.0 through 1.10 and 2.0 into evidence, and tender
21 the witness for cross.

22 JUDGE JONES: Thank you. Any objection? Let

1 the record show there are no objections. Accordingly
2 those exhibits are admitted into the evidentiary
3 record as they appear in the e-Docket system. The
4 filing dates have just been noted by Mr. Rippie when
5 he had the witness identify them. So I will not read
6 them into the record at this time. They are also
7 identified on the exhibit list that was filed which
8 included these two pieces of testimony and the
9 attachments exhibits as well.

10 So that would be 1.0 through 1.10 and
11 2.0.

12 (Whereupon Auction Manager
13 Exhibits 1.0, 1.1, 1.2, 1.3,
14 1.4, 1.5, 1.6, 1.7, 1.8, 1.9,
15 1.10 and 2.0 were admitted into
16 evidence.)

17 JUDGE JONES: And the witness was tendered for
18 cross, you say?

19 MR. RIPPIE: Yes, Your Honor.

20 JUDGE JONES: There appear to be several
21 parties who intend to cross-examine Dr. LaCasse. Who
22 would like to begin? Ms. Hedman?

1 CROSS EXAMINATION

2 BY MS. HEDMAN:

3 Q. Good afternoon, Dr. LaCasse.

4 A. Good afternoon, Ms. Hedman.

5 Q. I would like to start this afternoon with
6 the summary report on the questionnaire on auction
7 improvements which you have as part of your testimony
8 as Exhibit 1.8.

9 How many electric suppliers were
10 surveyed in this study?

11 A. There were -- we originally sent a
12 screening e-mail to a list of suppliers and included
13 those that were registered to the website and also
14 additional suppliers within MISO and PJM. And of
15 those that were sent the survey, I believe 13
16 responded.

17 Q. So this is based on a sample of 13 electric
18 suppliers?

19 A. That is correct.

20 Q. Do you have any idea how many electric
21 suppliers currently do business in PJM?

22 A. I don't know the exact numbers.

1 Q. Is it more than a hundred?

2 A. Yes.

3 Q. Is it more than 200?

4 A. I don't know.

5 Q. And do you have any idea how many electric

6 suppliers do business in the MISO territory?

7 A. Certainly more than 13.

8 Q. More than a hundred?

9 A. I don't know that.

10 Q. How many of the respondents to this survey

11 previously participated as bidders in the Illinois

12 auction?

13 A. The survey was done on an anonymous basis,

14 and what we have here are just the responses from

15 those suppliers and not the names. So I can not

16 answer that.

17 Q. So you don't know?

18 A. I don't know.

19 Q. Dr. LaCasse, was the title of your doctoral

20 dissertation "Collusive Pricing with Incomplete

21 Information"?

22 A. Yes.

1 Q. I would like to read you a passage from the
2 dissertation, and if you could indicate to me whether
3 or not you recognize that passage, I would appreciate
4 it. And this is from your dissertation abstract.

5 "These results imply that if a cartel
6 forms, it will have no difficulty in maintaining its
7 collusive agreement. The first part of the thesis
8 investigates when agents choose to collude, given the
9 benefits of collusion (cooperative payoffs dominate
10 non-cooperative payoffs) and its costs (agents risk
11 government prosecution).

12 "We choose the context of a simple
13 bidding model. Buyers at a first price sealed bid
14 auction decide whether to collude and decide on a
15 bidding strategy. The government can decide to
16 investigate the bidders based on the price fetched by
17 the object. The sequential equilibrium of this
18 one-shot game is semi separating. Bidders choose to
19 collude with some positive probability. A high
20 winning bid implies that the bidders were acting
21 non-cooperative. A low winning bid could have been
22 submitted by a cartel or by non-cooperative buyers.

1 The probability of collusion is monotonically
2 decreasing in the number of players."

3 Do you see that passage?

4 A. I recognize the general topic.
5 Unfortunately, it has been 26 years so I don't
6 remember exactly the --

7 Q. Now, in that passage there was a statement
8 that said, "The government can decide to investigate
9 the bidders based on the price fetched by the
10 object."

11 Do you still hold that view today?

12 A. It is not a view. It is a result of a
13 particular model that is specific to the type of
14 auction and to the particular assumptions that were
15 held within that model.

16 Q. And do you stand by your conclusion at the
17 outset of your direct testimony on page 15 where you
18 assert that the auction result was consistent with
19 market conditions?

20 A. Yes.

21 Q. What market conditions did you check before
22 drawing this conclusion?

1 A. We monitored the market conditions both
2 before the auction and during the auction, and the
3 public report includes a comparison of the level of
4 prices to general components of the full requirements
5 product in the wholesale market as well as a review
6 of the differences in prices across the products in
7 the auction.

8 Q. Could you recall what the comparable
9 forward prices were in the NYMEX, Northern Illinois
10 hub, during this period of the auction?

11 A. It is in the public report, if you would
12 like me to find that.

13 Q. If you will allow me, I believe on page 123
14 of your report you estimate the comparable market
15 price is \$48.50 per megawatt hour; is that correct?

16 A. That's one component, the forward prices
17 without load shaping or any of the other components
18 that comprise the full requirements service.

19 Q. And what was the price that the auction
20 arrived at?

21 A. Roughly speaking it was 60, 65 dollars a
22 megawatt hour for the B and FP products and 20, 25

1 dollars above that for the A and LFP products on the
2 fixed price auction.

3 Q. So would it be fair to say that the auction
4 price compared with the forward-market price, that
5 there was approximately a \$15 difference?

6 A. I'm sorry, could you repeat that?

7 Q. Comparing the forward-market price that you
8 identified of \$48.50 per megawatt hour and comparing
9 that with the price produced by the auction, would
10 you say that the difference is about \$15 per megawatt
11 hour?

12 A. Yes.

13 Q. And that's about a 30 percent difference?

14 A. Accounting for, as I said, the fact that
15 there has to be cost of load-following, cost of
16 capacity and transmission, and that it has all these
17 components in it, the difference between the two
18 figures that you quoted has additional costs that are
19 faced by the bidders, yes, that is correct.

20 Q. What is your estimate of the component of
21 the auction price that can be attributed to
22 load-following?

1 A. I don't have an estimate on each particular
2 component here; just an overall difference that is
3 accounted for by the costs and the components before
4 the promises that I named before.

5 Q. So you didn't do any independent analysis
6 to verify that the items that you have identified add
7 up to approximately \$15 a megawatt hour?

8 A. The \$15 is a difference between the auction
9 price that's obtained and the forward-market price.
10 We know what the components of the full requirements
11 service include, so that price is the difference
12 between those, what is required for the full
13 requirements service and the forward-market price.

14 Q. But you did no analysis of, for instance,
15 what suppliers value the individual components that
16 you say make up this difference; is that correct?

17 A. No, that's not correct. We looked at, for
18 example, the past few markets at the time and other
19 costs that bidders would take in, but it is not in
20 this paragraph in the report.

21 Q. Well, let's go through that. Of this \$15
22 differential how much would you attribute to

1 capacity?

2 A. I don't have the figures for any of the
3 particular components at this time. You asked
4 whether we had done an analysis at the time. That's
5 the question that I answered.

6 Q. And do you have that analysis available to
7 you?

8 A. No.

9 Q. It's been destroyed?

10 A. No, it is not available to me here.

11 Q. Here right now.

12 MS. HEDMAN: I would like to make an oral data
13 request of counsel and ask that that analysis be
14 provided to the People.

15 MR. RIPPKE: With your indulgence and hopefully
16 the permission of the ALJs we will respond to that
17 oral data request. As we have explained in other
18 contexts, we are laboring under a bit of an unusual
19 disadvantage in that there is material that Staff and
20 the AG's office has seen and we have not. So we may
21 have to confer with Dr. LaCasse and Staff before we
22 respond to it. But we will respond to it.

1 BY MS. HEDMAN: Thank you.

2 Q. Now, on page 16 of your testimony I see
3 that it states that, quote, The auction manager
4 examined bidding in the auction for anti-competitive
5 behavior and did not find any evidence of collusion
6 or coordinated behavior," and that's lines 333 to 334
7 on page 16. Do you see that?

8 A. I do.

9 Q. Now, were you referring to yourself in the
10 third person in that sentence?

11 A. I am afraid I was.

12 Q. Now, what steps were included in this
13 examination of bidding in the auction?

14 A. There was -- basically it included an
15 analysis of the round-by-round data that we obtained
16 from bidders and it included both my examination as
17 well as an outside expert on the auction manager
18 team, and an examination by Staff and their auction
19 monitor of the round-by-round bidding behavior.

20 Q. Did you check whether the auction
21 participants had any third-party relationships, for
22 instance, joint ventures?

1 A. Yes.

2 Q. And how did you conduct that analysis?

3 A. That analysis was through the information
4 that was provided in the application process.

5 Q. And did you conduct a subsequent analysis
6 after the review of the original disclosures in the
7 Part 2 application?

8 A. The disclosures in the Part 2 application
9 hold or have to hold until the end of the auction
10 process. So the evaluation is made at the Part 2
11 application stage, not afterwards.

12 Q. And so you have not conducted any
13 investigation about the conduct of the parties
14 subsequent to the auction?

15 A. No.

16 Q. Did you determine whether or not any of the
17 qualified bidders had been determined to have engaged
18 in collusive behavior in other venues?

19 A. Can I look at the application form?

20 Q. Certainly.

21 A. No, we do not have that.

22 Q. Did you review electronic quarterly reports

1 or any other FERC filings to determine whether any of
2 these bidders had relationships?

3 A. No.

4 Q. Did you check to see if any of the bidders
5 in the Illinois auction paid fines and settlements in
6 connection with the 2000/2001 California crisis?

7 A. No.

8 Q. How about in Texas?

9 A. No.

10 Q. How many traders previously employed by
11 Enron were present in the Illinois auction?

12 A. I don't know.

13 Q. Did you review transmission access into the
14 auction area for consistency with FERC market power
15 standards?

16 A. No.

17 Q. So to sum up, what you reviewed was the
18 round-by-round bidder data and the material provided
19 by the bidders in their self-certifications at the
20 Round 2 of the application stage; is that correct?

21 A. That's correct.

22 Q. And did Staff also review that material?

1 A. Yes.

2 Q. All of it?

3 A. Not all of the Part 2 application.

4 Q. Was there some reason that Staff didn't
5 review all of the Part 2 application?

6 A. Yes. There was -- the way the
7 certifications work in the Part 2 application, if the
8 bidders are able to certify to the statements in the
9 Part 2 application, they are signifying their
10 compliance with the Association of Confidential
11 Information Rules and there is no further review.

12 If the bidder is unavailable to
13 certify to a particular statement, it then discloses
14 information which is then reviewed by the auction
15 manager and by Staff.

16 Q. I would like to direct your attention to
17 page 33 of your direct testimony. And on page 33 is
18 there a discussion of your views regarding the need
19 for confidentiality with respect to auction data?

20 A. Yes.

21 Q. And I take it that it is your view that
22 some bidders prefer operating secretly; is that

1 correct?

2 A. No. My view is that to get the best
3 results from the auction and the best results for
4 customers, that some information should be kept
5 confidential regarding the bidders and regarding the
6 auction.

7 Q. Aren't auctions sometimes conducted in
8 public?

9 A. Yes.

10 Q. Would the open outcry system used in the
11 commodities trading situation be an example of that?

12 A. Yes, it would.

13 Q. Is it possible that parties engaging in
14 collusive behavior might prefer secrecy?

15 A. I am sure if they don't want to get caught
16 and to that extent, if that's what you mean. It is
17 illegal. So I don't know how to answer your question
18 directly.

19 Q. Now, you go on to say on this page that not
20 keeping this information confidential could deter
21 participation from qualified suppliers that hold this
22 point of view that we are discussing. Do you have

1 any evidence of this?

2 A. Again, it is really my point of view that
3 it is better for the auction to keep certain
4 information confidential, and I give some reasons
5 here, including the fact that suppliers have to
6 transact in the market to assemble the products that
7 they will bid in the auction. And not providing them
8 that confidentiality means they can't get the best
9 deal possible and they can't make the best bids in
10 the auction.

11 There certainly have been comments
12 that have been provided to me as auction manager in
13 New Jersey, for example, asking that, for example,
14 the name of the non-winners in the auction not be
15 made public.

16 Q. So on line 715 and 716 where you say, "Not
17 keeping this information confidential could deter
18 participation from qualified suppliers that hold this
19 point of view," you have not done any kind of
20 systematic survey that would determine how many
21 suppliers actually hold that point of view?

22 A. No.

1 Q. Is it possible that bidders with market
2 power or contemplating collusive agreements would be
3 more inclined to ask for secrecy than other bidders?

4 MR. RIPPIE: I have to I think object. There
5 is no foundation that there are such people or that
6 she has any knowledge or ability to speculate about
7 what such entities contemplating illegal behavior
8 would or would not do. I know she is an expert but
9 that's seeking speculation.

10 JUDGE WALLACE: Objection is overruled. The
11 witness can go ahead and answer the question.

12 THE WITNESS: A. Given that colluding is
13 illegal, if colluding was done in the open,
14 presumably it would mean that the participants would
15 get prosecuted to the extent -- to that extent if we
16 talk about bidders who want to collude, they have to
17 want their collusion to be secret.

18 Here I think that's not what we are
19 discussing. We are simply discussing, for example,
20 the status of bidders' participation in the auction
21 and how that may hamper their ability to put the best
22 bid forward in the auction and get the best results

1 for customers.

2 Q. Now, remind me, didn't your 1991
3 dissertation find that collusive behavior is
4 sustainable in the auction?

5 A. In the theoretical model that I have that
6 has nothing to do with the auction here, bidders with
7 a certain probability and were able to collude, yes.

8 Q. And didn't you also conclude that such
9 collusion is very difficult to detect?

10 A. In that theoretical model that has nothing
11 to do with the auction here, yes.

12 Q. On page 36 of your testimony, starting at
13 line 779, you state that, "Perhaps the more
14 substantial modification is that I propose to account
15 for the relevant period during which the supplier
16 product match is not released as a lapsed time from
17 the close of the auction, rather a counting backward
18 from the first day of the supply period. The reason
19 for the supplier/product match to remain confidential
20 is to give suppliers time from the close of the
21 auction to hedge and to make supply arrangements.
22 Accounting for the time elapsed from the close of the

1 auction is the relevant way to account for this time
2 period."

3 Do you believe that bidders waited
4 until after the auction to make supply and hedging
5 arrangements?

6 A. I would expect that some would, yes.

7 Q. Do you have any data to support this
8 notion?

9 A. I guess the easiest clear fact in that
10 direction is that bidders who were bidding on the A,
11 the PPA and the GSIP product, I would not know the
12 load that they would have to serve until after the
13 auction. And one can certainly presume that they
14 would be finalizing those supply arrangements well
15 after the auction to serve these products.

16 Q. Have you purchased a car or a house or
17 other real state?

18 A. Yes.

19 Q. And when you made these investments did you
20 check your credit and the availability of lenders
21 before you made the purchase or after?

22 A. I am sorry, can you repeat that?

1 Q. I am asking when you made those types of
2 purchases, did you check your credit and the
3 availability of lenders before or after you made the
4 purchase?

5 A. Before.

6 Q. Now I would like to switch gears to your
7 rebuttal testimony. At the bottom of page 29 of your
8 rebuttal testimony you state that the prices in the
9 auction don't have an analog in the wholesale market.
10 Do you see that?

11 A. Yes.

12 Q. Nonetheless, wasn't your primary basis of
13 comparison in your post-auction report the prices in
14 the wholesale markets?

15 A. Yes. This refers to a particular product
16 in the auction. So, for example, the percentage of
17 load for the B product, not having an analog, that
18 doesn't mean that there are not other comparable
19 wholesale prices with components of that service.

20 Q. Did you look at wholesale market prices at
21 all in establishing the opening price of the auction?

22 A. Yes.

1 Q. Did you look at the production costs of
2 qualified bidders?

3 A. No.

4 Q. Did you look at the indicative bids of
5 qualified bidders?

6 A. Yes.

7 Q. Were there any other factors that you
8 considered in setting an opening price?

9 A. Those were certainly the main ones.

10 Q. And in the future if you were to set an
11 opening price, what factors would you look at?

12 A. The factors to set the minimum and maximum
13 starting prices and the opening prices in the auction
14 are part of methodology that is confidential from the
15 bidders. But in the procurement dockets we
16 established that that methodology would consider
17 market priced data and would also consider the
18 indicated offers at the Part 2 application stage.

19 Q. Now, on the same page or the next page on
20 page 30 at lines 608 and 609, you indicate that you
21 think it would be a mistake for the Commission to
22 make its decision about whether to accept or reject

1 the results of the auction by sole reference to a
2 benchmark; is that correct?

3 A. That is correct.

4 Q. Now, Dr. Rose doesn't recommend a single --
5 that the Commission use a single benchmark in
6 determining whether to accept the results of an
7 auction, does he?

8 A. Certainly the way I read his testimony that
9 I was responding to here is that he proposed two
10 types of benchmarks. And because those benchmarks
11 were linked to the fact that they could be used to
12 set the reserve price that our representatives ask if
13 the auction results meet those prices, then they
14 should be accepted and if they don't meet it, then
15 they should be rejected.

16 Q. Were you here when Dr. Rose was
17 cross-examined this morning?

18 A. I was.

19 Q. And didn't he make it clear that the
20 benchmarks he was proposing were two of the factors
21 he thought the Commission should consider?

22 A. He did. Unfortunately, it wasn't clear

1 from his testimony.

2 Q. And turning to page 33 of your testimony,
3 under lines 675 through 678 you are discussing the
4 portion of Dr. Rose's testimony that relates to
5 direct negotiation with suppliers in connection with
6 the sealed bidding process?

7 A. Yes.

8 Q. Are you familiar with any modeling that do
9 combine bidding and negotiation?

10 A. Can I ask you to clarify what you mean by
11 model?

12 Q. Any procurement models, electricity
13 procurement models.

14 A. No.

15 Q. Did you read Dr. Remy's (sp) testimony in
16 the auction procurement dockets?

17 A. Yes.

18 Q. And isn't that what he proposed?

19 A. I believe that he was discussing direct
20 negotiations as an alternative to having an auction.
21 That is my recollection of his testimony, not
22 combining a sealed bid process with direct

1 negotiations.

2 Q. Now, your testimony makes it clear that you
3 are strongly supportive of and hugely invested in the
4 declining price reverse auction, uniform price
5 reverse auction. What would be your second choice as
6 a procurement method?

7 A. I haven't thought about that.

8 MS. HEDMAN: I have nothing further. Thank
9 you.

10 THE WITNESS: Thank you.

11 JUDGE JONES: Who would like to go next?

12 MR. FOSCO: Staff can go.

13 JUDGE JONES: Mr. Fosco.

14 CROSS EXAMINATION

15 BY MR. FOSCO:

16 Q. Good afternoon, Dr. LaCasse.

17 A. Good afternoon.

18 Q. My first line of questions is going to
19 address the agency arrangement proposals that you
20 made.

21 Am I correct that you propose to
22 establish requirements for perspective suppliers that

1 choose to participate in the Illinois auction through
2 the use of an agent under an agency arrangement?

3 A. Yes.

4 Q. And am I correct that you also testify that
5 specifying the requirements for a perspective
6 supplier that participates in the Illinois auction
7 through an agent under an agency arrangement would
8 serve to increase participation and competition in
9 the auction process?

10 A. Yes, that is the objective.

11 Q. Can you just sort of briefly explain your
12 thinking with regard to that last point, so that if
13 the suppliers know the requirements, they are more
14 likely to participate?

15 A. Basically, that's right. Right now,
16 because that particular case is not treated
17 separately, there is no separate explanation of how
18 the requirements of the application would apply to an
19 agency agreement, there is a possibility that
20 suppliers would hesitate to apply under an agency
21 agreement, not knowing how the requirements apply to
22 them.

1 So if you specify those requirements
2 and make it clear to them the documents that are
3 required under the application form, then they are
4 more likely to be ready and more likely to be able to
5 apply to the auction.

6 Q. Do such requirements exist in the New
7 Jersey auction at this point in time?

8 A. Separately, no.

9 Q. So this is the first auction where you are
10 proposing these particular requirements, that you
11 have been involved with?

12 A. The requirements that we are proposing
13 track what we did in the 2006 auctions when
14 confronted with applicants that had agency
15 agreements. So they were simply putting those
16 requirements up front to be able to have perspective
17 suppliers know that they exist, know that they can
18 apply and be able to get ready for the application
19 process.

20 Q. Would you agree that in addition to
21 attempting to encourage auction participation through
22 allowing agency participation, it is also important

1 to protect the utilities and their customers from any
2 additional risk that might result from having
3 participation by an agent?

4 A. Yes. And it is important that the
5 requirements of the application process that apply to
6 other suppliers, apply to, in the right format, apply
7 to suppliers that are applying under an agency
8 agreement.

9 Q. And the exhibit containing your proposal is
10 Auction Manager Exhibit 1.3; correct?

11 A. That is correct.

12 Q. If you could refer to Exhibit 1.3? I don't
13 know if you have it in front of you. Under the --
14 well, let's establish this background. You
15 established two cases for agency involvement; is that
16 correct?

17 A. That's right.

18 Q. And could you explain what those two cases
19 are?

20 A. The two cases depend on which party would
21 actually sign and execute the power-forward contract,
22 whether it is the principal or whether it is the

1 agent. So in one case the agent is applying to the
2 auction, filling in the Part 1 application, the Part
3 2 application and bidding, and also signing the
4 supplier-forward contract, acting on behalf of the
5 principal that's the entity ultimately responsible.
6 That is one case.

7 The other case is still the agent that
8 applies in Part 1, applies in Part 2 and bids, but
9 there is a change at the signing and executing the
10 supplier-forward contracts, and it is the principal
11 that signs the supplier-forward contract.

12 Q. Thank you. Under the case one scenario of
13 Auction Manager Exhibit 1.3 there is a requirement
14 for an officer certificate from the principal. Do
15 you see that?

16 A. I see that.

17 Q. Would you agree with me that there might be
18 suppliers that participate that are not corporations,
19 for instance, partnerships?

20 A. Yes.

21 Q. And would you agree that the appropriate
22 evidence of authorization might be different

1 depending on the type of entity?

2 A. Yes, I would agree with that.

3 Q. And we would find that same -- if we were
4 to look at the case two scenario, we would find the
5 same language in terms of an officer certificate?

6 A. Yes, we do.

7 MR. FOSCO: Your Honor, may I approach the
8 witness?

9 JUDGE WALLACE: Yes.

10 MR. FOSCO: And I apologize, are we still on
11 Staff Cross Exhibit 7? Mr. Feeley used an
12 additional.

13 MR. TOWNSEND: I don't think he did.

14 JUDGE WALLACE: Mr. Feeley did not use one at
15 all. I think, I believe the next number is 6.

16 MR. FOSCO: We had 7. That was the one we were
17 going to file on e-Docket, that cross exhibit.

18 JUDGE WALLACE: Is that that 10K?

19 MR. FOSCO: Yes.

20 JUDGE WALLACE: So, yeah, you are on 8 then.

21 (Whereupon ICC Staff Cross
22 Exhibit 8 was marked for

1 purposes of identification as of
2 this date.)

3 BY MR. FOSCO:

4 Q. Dr. LaCasse, I have presented to you what I
5 have marked for identification as ICC Staff Cross
6 Exhibit 8. And what this document is, it's a copy of
7 your Auction Manager Exhibit 1.3 showing certain
8 proposed possible changes to this document. And I
9 realize you can't identify the additions, but can you
10 identify the basic document as what was attached as
11 your Auction Manager Exhibit 1.3?

12 A. Yes.

13 Q. And what I would like to ask you, under
14 item number 3 for case one, this contains some
15 language deleting the officer's certificate language
16 and indicating that a certificate from the principal
17 executed by an officer, partner or similar official
18 to principal would be accepted. Would that change be
19 acceptable to you to this document?

20 A. Yes. It simply covers more cases than just
21 a corporation.

22 Q. And would you also agree to the additional

1 bullet point in item number 3 which indicates
2 basically a sort of more broad ranging provision of
3 the applicable authorization?

4 A. Yes.

5 Q. And then similarly if we were to go to the
6 language added under case two, paragraph number 3,
7 that those are similar changes, would those also be
8 acceptable to you?

9 A. They would.

10 MR. FOSCO: Your Honor, may I approach the
11 witness again?

12 (Whereupon ICC Staff Cross
13 Exhibit 9 was marked for
14 purposes of identification as of
15 this date.)

16 BY MR. FOSCO:

17 Q. Dr. LaCasse, I have handed you a document
18 that I have marked for identification as ICC Staff
19 Cross Exhibit 9. I would like to explain to you what
20 this is and then we can proceed from there. What I
21 basically did was take your Auction Manager Exhibit
22 1.3 as originally attached to your testimony and

1 compared the case one and case two language so that
2 we could identify the differences between the
3 requirements you are proposing under case one with
4 the language that you are proposing under case two,
5 and I just kind of like to walk through these.

6 Would you agree that this document
7 appears to be what I just represented to you?

8 A. Yes, I would.

9 Q. If you go under Additional Documents, the
10 first paragraph, the first difference between the
11 case one and the case two is that in the case two
12 scenario the language "Should the applicant be the
13 winning bidder in the auction," the "principal will
14 be" is deleted; correct?

15 A. Correct.

16 Q. And then there is some slightly different
17 language for the balance of the sentence.

18 Am I correct that the basis for that
19 change or that difference is that in the case two
20 scenario the applicant is executing both the
21 application and the FCC so there is no need to
22 separately state that the principal will be

1 executing?

2 A. That is correct.

3 Q. Then if we go down to paragraph number 2,
4 we see that one of the two bullet points in that item
5 was deleted in the case two scenario; correct?

6 A. That is correct.

7 Q. Can you explain to me why you don't propose
8 or why you propose to not include the second bullet
9 point where you have an applicant executing the SFC?

10 A. The second bullet point is to unsure that
11 if the applicant -- so in the other case where the
12 agent is the applicant but it is the principal that
13 signs the supplier-forward contract, to make sure
14 that the agency agreement binds the principal to the
15 execution of the SFC should the applicant win.

16 So in the case where it is the
17 principal that executes the SFC, there has to be a
18 change in the entity that the utility would be whom
19 the auction manager deals with from being the agent
20 at the application stage to being the principal of
21 the supplier-forward contract. So we want to avoid a
22 situation where the applicant is bidding, the

1 applicant bids and the principal doesn't sign the
2 supplier-forward contract. So that bullet is
3 included.

4 But when it is the agent that is also
5 going to sign the supplier-forward contract, then
6 that requirement is no longer necessary.

7 Q. Redundant?

8 A. Redundant.

9 Q. Now, if we go down to item number 3, we see
10 that the first change that happens in the case two
11 scenario is that -- well, in the case one scenario
12 you must obtain a certificate from the principal;
13 correct?

14 A. Correct.

15 Q. In the case two scenario the first change
16 that happens is we allow the certificate of
17 authorization to be from the applicant or the
18 principal; correct?

19 A. Correct.

20 Q. Can you explain that difference to me or
21 what's the basis for having that distinction?

22 A. The applicant again is executing this

1 supplier-forward contract in the case that we are
2 examining. So that officer certificate could come
3 from the applicant, the signer of the SFC, or the
4 principal, given that the applicant is the agent and
5 ultimately is acting on behalf of the principal who
6 is the ultimately legally responsible entity. So it
7 could come from either.

8 Q. Wouldn't it be more secure for the
9 utilities and their customers if we had an
10 authorization signed by the principal so that we
11 would know the agent actually has the authority from
12 the statement of the principal?

13 A. I believe that's already covered from
14 asking the agency agreement, and that to state that
15 it is going to be in full force and effect and to ask
16 for the basis of authorization of that agreement.

17 Q. So the basis for your proposal was that you
18 are requiring a copy of the agency agreement and that
19 will indicate to you, as the auction manager, that
20 there is in fact an agency agreement with the
21 principal?

22 A. Yes.

1 Q. Are you aware of any -- strike that.

2 Would there be any reason not to
3 require that this representation come from the
4 principal for the case two scenario?

5 A. I think the reason would be the burden on
6 the applicant and the agent. To the extent that it
7 is with the agent that the relationship is throughout
8 the application process, throughout the auction and
9 potentially through the term of the supplier-forward
10 contract, there may not be the ease, the same ease of
11 providing the documents to go to the ultimately
12 legally responsible entity in that case.

13 On the other case where the principal
14 will sign the supplier-forward contract, there will
15 be an ongoing relationship and we can go to the
16 entity that is signing the supplier-forward contract.

17 Q. Would you agree with me that in the
18 situation where there is some mistake or a
19 misrepresentation by the agent, the utilities'
20 customers are less protected where there is not an
21 officer certificate or other certificate from the
22 principal?

1 A. Yes.

2 Q. Then again, continuing with paragraph 3, I
3 guess consistent with the earlier changes we
4 discussed, the representations that the principal is
5 familiar with the agency agreement and that the
6 principal is familiar with the Part 1 and Part 2
7 applications is something contemplated in the case
8 two scenario?

9 A. That is correct.

10 Q. And then if we go to the third bullet point
11 on the second page -- I am sorry, the second bullet
12 point on the second page of ICC Staff Cross Exhibit
13 9, there is an additional language in the case two
14 scenario, "and would be authorized to execute the SFC
15 should it win the auction." And I think that is that
16 simply to indicate that since the agent is going to
17 be executing both documents, it is an additional
18 representation that the agent can execute the SFC?

19 A. That is correct. So there is an additional
20 protection there in that particular case.

21 Q. And then in the case two scenario on the
22 paragraph above the heading Credit Worthiness, there

1 is an additional sentence that basically indicates
2 that the applicant, should it be the winning bidder,
3 would be required to refresh the certificate upon
4 execution of the SFC and state that the agency
5 agreement remains in full force and effect.

6 And again is that because in the case
7 two scenario we are still operating under the agency
8 where the agent is signing the SFC?

9 A. The agent -- I am not sure whether the
10 signing the SFC is the correct term. The agent is
11 executing the supplier-forward contract under this
12 agency agreement and, therefore, the credit
13 worthiness that's being evaluated. The entity that's
14 ultimately legally responsible is the principal.
15 Given those representations, the signing of the SFC
16 should continue through the term of the
17 supplier-forward contract.

18 So this is what this paragraph is
19 doing. It is continuing the requirements that would
20 apply only to the application process in the auction
21 in case one and extending it through the life of the
22 supplier-forward contract if indeed it is the agent

1 that signs and executes the supplier-forward
2 contract, and that deals with the utility.

3 Q. Okay. One of the requirements that I do
4 not see here is a requirement for notice to either
5 the auction manager there in the auction or the
6 utilities after the auction if the agency agreement
7 is terminated. Is there a reason why you didn't or
8 would not include a requirement for notice in the
9 event that the agency agreement has been terminated?

10 A. Under the requirements that we have here,
11 and I will point you to the number 3 of the
12 additional documents, one of the requirements is that
13 the agency agreement remain in full force and effect
14 until the completion of the Illinois auction and,
15 indeed, until the supplier-forward contracts have
16 been signed. So we have to have or we are requiring
17 here of the applicant the officer to take a
18 certificate from the person with required authority,
19 as you pointed out, that that be true.

20 What happens after the fact if it is
21 the agent that signs the supplier-forward contract
22 would be something that the utility would put in

1 place to insure that if an agreement continues that
2 they provide notice.

3 Q. I understand that you have a representation
4 that the agency agreement will remain in force. But
5 would it be your experience that contracts can be
6 broken and unanticipated developments can occur to
7 change what someone believes at the time they sign a
8 document?

9 A. I am sure in general that's true. But the
10 requirements that are put in the auction process and
11 to the application I think were very clear to bidders
12 that they have to be able to sign the certification
13 that they made for the period, and it is a restricted
14 time period, of course, for which they have to go.

15 Q. Do you anticipate reviewing the agency
16 documents that are required, and I mean the agency
17 arrangement itself, to determine that it will remain
18 in force through the date that is specified here?

19 A. No.

20 Q. And just for a couple of clarifications,
21 under the credit worthiness paragraphs of your
22 Auction Manager Exhibit 1.3, it refers to Subpart

1 A-6. Is that referring to Subpart A-6 of the Part 1
2 application?

3 A. That is correct.

4 Q. And that is Auction Manager Exhibit 1.4 to
5 your testimony; is that correct?

6 A. That is correct.

7 Q. Could you refer to page 14 of Auction
8 Manager Exhibit 1.4?

9 A. Yes.

10 Q. And this is the section that's referenced
11 in your Auction Manager Exhibit 1.3; correct?

12 A. That is correct.

13 Q. And under this section there is three check
14 boxes, is that correct, for either applicant,
15 guarantor or principal, and for the principal check
16 box there is a parenthetical for applicants applying
17 under an agency agreement only; is that correct?

18 A. Yes.

19 Q. In any situation where a supplier is
20 operating under an agency agreement would you expect
21 them to always check either box 3, the principal, or
22 box 2, the guarantor?

1 A. Yes.

2 Q. So you do not believe that they should be
3 able to check box 1, applicant?

4 A. That is correct.

5 Q. Would you agree that it might avoid
6 confusion if we were to add parenthetical language to
7 the first check box indicating that the applicant is
8 not for use in an agency arrangement situation?

9 A. Yes.

10 Q. And I believe you state this elsewhere in
11 your testimony but I would just like to confirm, the
12 use of an agency arrangement does not change in and
13 of itself the entity that was relied upon for the
14 credit worthiness examination; is that correct?

15 A. That is correct.

16 Q. It will always be the principal or if they
17 have a guarantor, the guarantor?

18 A. That is correct.

19 Q. And it will not be the agent?

20 A. That's right.

21 Q. I guess just a few final questions about
22 the agency. Have you ever had a situation where an

1 application was filed through an agency arrangement?

2 A. Yes.

3 Q. And I am not asking you to disclose
4 particular suppliers, but would the type of language
5 be Agent ABC as agent for -- and the name of the
6 principal? Or would they submit it in some different
7 format?

8 A. Are you asking what the name of the bidder
9 is?

10 Q. I am. Would they indicate that it is as
11 agent for principal whoever it is?

12 A. Yes, typically, it would be Company X as
13 agent for Y.

14 Q. One more question about this. It indicates
15 under, I believe, both case one and case two
16 scenarios that an applicant that can not provide the
17 requested documents may fail to qualify. And my
18 question is about use of the word "may." Why or
19 what's your intent with using the word "may" instead
20 of "will" fail to qualify?

21 A. Can you point me to where that is?

22 Q. Sure, just above the Credit Worthiness

1 heading for both case one and case two scenarios, the
2 first sentence of either. It is a multi-sentence
3 paragraph where the only sentence indicates that if
4 the applicant cannot provide these documents or if it
5 provides documents that do not meet these conditions
6 may fail to qualify for the auction is the language.

7 And if it is subject to someone else,
8 what is the analysis that would be made in this
9 situation?

10 A. Can I give you an example?

11 Q. Sure. I am just trying to understand why
12 you chose to use the sort of discretionary "may"
13 instead of a mandatory term, and what you thought
14 would happen if there were a question?

15 A. What I was considering here is the
16 possibility that although the applicant would be able
17 to fulfill the spirit of the requirements, that they
18 wouldn't be able to necessarily provide exactly this,
19 the documents that we are providing.

20 So, for example, let's say that there
21 was a proceeding to amend the agency agreement of
22 what that they were able to provide with the

1 amendment would be, and that the agency agreement at
2 the time of the Part 1 application and as it would
3 stand, for example, just before the auction would
4 both satisfy the requirements that were here.

5 The applicant would not be able to say
6 that there was no proceeding pending the amendment or
7 the termination of the agency agreement, but would be
8 able to produce documents that would still satisfy us
9 that the agency agreement would allow the agent to
10 participate and, for example, the principal to sign
11 the supplier-forward contract.

12 Q. So the intent even with this language is
13 that there would be substantial compliance with all
14 the requirements?

15 A. Absolutely, yes.

16 Q. And if not strict compliance, then some
17 sort of alternative demonstration of compliance with
18 the intent of each?

19 A. That is correct.

20 Q. You just used it now in this example and it
21 is also in the agreement. You refer to a proceeding
22 regarding the agency agreement. Can you explain to

1 me what you meant, what you mean by that, or what
2 type of proceedings you are referring to?

3 A. It was not very specific. It was just a
4 process, may have been a better word.

5 Q. So you weren't thinking of a court or a
6 judicial proceeding?

7 A. I was not.

8 Q. It is more negotiations between the
9 applicable parties?

10 A. Yes.

11 Q. We are finished with the agency line of
12 questions.

13 Are you familiar with the testimony in
14 this proceeding proposing the ability for large
15 customers to choose between the seven-day or a 20-day
16 sign-up window?

17 A. Yes, I am.

18 Q. And do you have an opinion about the
19 practicality of working into the pre-auction schedule
20 in time for large customers to choose between a
21 seven-day or a 20-day sign-up window and then a
22 subsequent time for those selections to be analyzed

1 by the auction manager and then a subsequent time to
2 announce to bidders, the load associated with each of
3 those groups that will be available to bidders at the
4 auction?

5 A. Yes, I do. I looked at the proposal in
6 light of the proposed schedule that was included as
7 Exhibit 1.9B, and there is a period of time between
8 the expected close of the improvement docket and an
9 order by the Commission, and the time at which the
10 tranche docket would be announced, and that is over
11 six weeks. And I believe that there would be time
12 during that period to run the pre-qualification
13 process and arrive at a determination regarding the
14 tranche target to be announced to bidders.

15 Q. If those proposals are accepted by the
16 Commission, would it be your recommendation that the
17 exact time lines be worked out as compliance or do
18 you think the answer you just gave me establishes
19 substantially when those time lines would occur?

20 A. I think that we could work within the time
21 line that was proposed in my direct testimony.

22 Q. So it could fit within the existing

1 schedule?

2 A. I believe so.

3 Q. You are also familiar, are you not, with
4 the issue of the mix of -- or strike that.

5 Are you familiar with the proposal by
6 Staff witnesses Zuraski and Kennedy to utilize a mix
7 of one, two and three-year contracts?

8 A. Yes, I am.

9 Q. And as the auction manager do you have any
10 opposition to that specific proposal in terms of its
11 impact on the auction?

12 A. None.

13 Q. No opposition?

14 A. No opposition.

15 Q. Do you recall responding to a data request
16 from Staff that was labeled RP-1.03?

17 A. Yes.

18 MR. FOSCO: Your Honor, I think I might mark
19 this because I will be referring to it on the record.
20 And I will mark this as Staff Cross Exhibit 10.

21 (Whereupon ICC Staff Cross
22 Exhibit 10 was marked for

1 purposes of identification as of
2 this date.)

3 BY MR. FOSCO:

4 Q. Dr. LaCasse, do you have in front of you
5 what has been marked Staff Cross Exhibit 10?

6 A. I do.

7 Q. And is this a copy of a response that you
8 prepared or assisted in preparing?

9 A. Yes.

10 Q. Am I correct that the response to Data
11 Request RP-1.03 indicates that the auction manager
12 team assesses a deficiency when the information
13 provided by an applicant is incomplete or when the
14 information provided presents an inconsistency?

15 A. That is correct.

16 Q. Can you explain what you mean by
17 inconsistency? And providing examples, if you can.

18 A. So, for example, it would be, given that
19 the question relates to the calculation of tangible
20 net worth, if, for example, it said tangible net
21 worth is equal to 90 and that is a hundred minus
22 points, that would be an inconsistency. So it is

1 pieces of information that don't fit together.

2 It could also be an incorrect
3 reference to the financial statements. So if there
4 is a number provided but the reference does not
5 correspond to that number, that would also be
6 inconsistent.

7 Q. Would it refer to situations where the
8 opinion of the credit management team is different
9 from the submission?

10 A. No, it would not.

11 Q. So it refers more to factual or technical
12 inconsistencies?

13 A. That is correct.

14 Q. I am sorry, if we could have one minute.

15 (Pause.)

16 Dr. LaCasse, in the response to RP-1.03,
17 Staff Cross Exhibit 10, you list several items that
18 would be considered to be deficiencies with respect
19 to the total net worth calculation; correct?

20 A. Yes.

21 Q. And these deficiencies that you list
22 include incorrect citations for any of the total net

1 worth components, supplying the citation to a
2 document that has not been provided with the
3 application material, the applicant making a
4 calculation error, the applicant failing to provide
5 one or more citations to the financial statements, or
6 the applicant providing an internal support
7 calculation without a citation slip?

8 A. That is correct.

9 Q. Regarding your reference to supplying a
10 citation for a document that has not been provided
11 with the application material, do you agree that an
12 applicant's failure to provide financial statements
13 is a deficiency even if Staff's total net worth
14 proposal is not adopted?

15 A. Yes.

16 Q. Can you explain how the auction management
17 team would determine whether the following three
18 items are deficiencies or differences of opinion?
19 And as the first item, incorrect citations for any of
20 the total net worth component, the applicant failing
21 to provide one or more citations for their financial
22 statements, and the fifth item, the applicant

1 providing a total net worth calculation without
2 citations.

3 A. All of these. The applicant -- the
4 requirement in the application was to both provide
5 the calculation of tangible net worth and provide
6 citations to its financial statements. If there was
7 merely a calculation and there were no citations from
8 the components of the tangible net worth back to the
9 financial statement as required by the application,
10 then this would be a deficiency.

11 So in general the application team
12 will look at the calculation of the tangible net
13 worth in the calculation, the citations that are
14 provided in the application, and try to match them to
15 the financial statements. And if there is an
16 inconsistency, a lack of a match between these two
17 sources of information, then a deficiency would be
18 applied and a clarification requested from the
19 applicant.

20 Q. Would you agree that it is possible that
21 sometimes there could be differences of opinion about
22 how to read the financial information, so that even

1 though a citation is provided, it is possible that
2 the auction manager team might think that there is a
3 deficiency but it is really just a difference of
4 opinion from the applicant?

5 A. I think that's unlikely, given that what we
6 are asking for is a citation to where those numbers
7 are found in the financial statements.

8 Q. Would the auction manager team determine
9 whether an incorrect citation for any of the tangible
10 net worth calculation is a deficiency before or after
11 the credit and application team calculates the
12 applicant's tangible net worth?

13 A. Before. So again all we are discussing
14 here is really matching the information that would be
15 provided on the application form to what's in the
16 financial statement. So if there is a number
17 provided for, I don't know, intangibles, for example,
18 and it says see note 15 on this page of the financial
19 statement, we would check that that number indeed
20 appears there. And if it doesn't appear there or it
21 appears on another page or there was another number,
22 then there would be an inconsistency and there would

1 be a deficiency in the application at that point.

2 So it is really a matching of the
3 application between what's provided in the
4 application and the citations to the financial
5 statement and the calculation.

6 Q. So all these potential deficiencies would
7 be determined before the auction manager team makes a
8 determination of tangible net worth?

9 A. If the credit application team makes a
10 determination, it would be before then, yes.

11 MR. FOSCO: Your Honor, may I approach the
12 witness again?

13 JUDGE JONES: How much more do you have?

14 MR. FOSCO: I am nearly finished.

15 (Whereupon ICC Staff Cross
16 Exhibit 11 was marked for
17 purposes of identification as of
18 this date.)

19 BY MR. FOSCO:

20 Q. Dr. LaCasse, do you have in front of you
21 what I have marked for identification as ICC Staff
22 Cross Exhibit Number 11?

1 A. I do.

2 Q. And is that a copy of a data request
3 response that you prepared or assisted in preparing?

4 A. It is.

5 Q. Referring to your response to the Subpart C
6 of this data request, it indicates that some
7 applicants can be expected, for a variety of reasons,
8 not to exercise all necessary care in preparing their
9 applications; is that correct?

10 A. That is correct.

11 Q. Can you provide the reasons that some
12 applicants can be expected not to exercise all
13 necessary care in preparing their applications?

14 A. In general or for the tangible net worth
15 calculation in particular?

16 Q. For tangible net worth calculation in
17 particular.

18 A. I think it may be a consideration for those
19 applicants that ultimately the determination of the
20 unsecured credit line that they will have at the
21 application phase-in of a supplier-forward contract
22 is much more likely to be determined through the cap

1 on that unsecured credit line that is in the
2 supplier-forward contract than by the tangible net
3 worth calculation that will have been named.

4 Q. And the highest cap is 60 million; is that
5 correct?

6 A. That is correct.

7 Q. What percentage of tangible net worth
8 calculations that the credit management team made
9 were subject to the cap?

10 A. For the winners of the last auction I
11 believe all of them were subject to the cap and none
12 of them were determined through the tangible net
13 worth.

14 Q. Other than what you have just testified to,
15 is there anything else that would distinguish the
16 total net worth calculation from the other
17 application requirements in terms of --

18 A. Care?

19 Q. Yes.

20 A. No.

21 Q. Was your statement that applicants might
22 not exercise all necessary care also meant in the

1 generally sense all applicants?

2 A. Yes.

3 Q. And could you explain what supports that
4 statement?

5 A. It is common to have a number of applicants
6 that will have deficiencies in the Part 1 and Part 2
7 applications that are simple mistakes in filling out
8 a form.

9 Q. Would you agree in general, though, that
10 applicants intend to exercise all due care with
11 respect to the applications?

12 A. Yes.

13 Q. In Subpart F of this response marked as ICC
14 Staff Cross Exhibit 11 you provide curriculum vitae
15 for three members of the auction manager team; is
16 that correct?

17 A. That is correct.

18 Q. And it is your representation there that
19 you believe those members possess sufficient
20 expertise to accurately compile the components of the
21 total tangible net worth calculation; correct?

22 A. Yes.

1 Q. Do you agree that of those three
2 individuals, only Mr. Wininger (sp) attended the
3 meetings in which the credit application team
4 reviewed applications for the 2006 auction?

5 A. Yes.

6 MR. FOSCO: And, Your Honor, that would
7 conclude my cross. But one more exhibit is the
8 response. I have no questions about it. It would be
9 the response to Data Request Number RP-1.02 which I
10 would mark as ICC Staff Cross Exhibit Number 12. I
11 believe counsel has indicated that they would have no
12 objection to the introduction of that document.

13 (Whereupon ICC Staff Cross
14 Exhibit 12 was marked for
15 purposes of identification as of
16 this date.)

17 JUDGE JONES: Are you offering Exhibits 8
18 through 12?

19 MR. FOSCO: Yes, I will. With that I would
20 move for the admission of ICC Staff Cross Exhibits 8
21 through 12.

22 MR. RIPPIE: No objection.

1 JUDGE WALLACE: All right. No objection, those
2 are admitted.

3 (Whereupon ICC Staff Cross
4 Exhibits 8, 9, 10, 11 and 12
5 were admitted into evidence.)

6 JUDGE JONES: Mr. Townsend?

7 CROSS EXAMINATION

8 BY MR. TOWNSEND:

9 Q. Good afternoon, Dr. LaCasse?

10 A. Good afternoon.

11 Q. Chris Townsend appearing on behalf of the
12 Coalition of Energy Suppliers. I would like to
13 direct your attention to Exhibit 1.8. And can you
14 tell me who was surveyed?

15 A. They were 13 perspective suppliers that
16 were either active in MISO or PJM.

17 Q. And how did you determine whether the
18 respondents were likely to be participants in the
19 2008 auction?

20 A. We asked them.

21 Q. And do you believe that the responses you
22 received were truthful and accurate?

1 A. Yes.

2 Q. Do you believe that the responses provided
3 to the survey are important information that the
4 Commission should consider?

5 A. Yes.

6 Q. Do you believe that the survey is worthy of
7 substantial weight in this proceeding?

8 A. I don't know how to answer that.

9 Q. Why is it that you think that this is
10 important information that the Commission should
11 consider?

12 A. Because I think it provides information
13 from suppliers that could be participating in the
14 2008 auction, having indicated an interest on certain
15 topics that are subject in this proceeding on which
16 other arguments and testimony have been provided but
17 in which, in addition, there is the responses to the
18 survey.

19 Q. And why is that perspective important?

20 A. The results of the 2008 auction are going
21 to be better and would result in lower prices for
22 customers if more suppliers would participate. And

1 that is more likely to the extent that we take their
2 preferences into account.

3 Q. Would you agree that increasing the number
4 of auction products could decrease the number of
5 bidders on each individual auction product?

6 A. No.

7 Q. That's not a possibility?

8 A. I don't believe so.

9 Q. Are you familiar with the enrollment window
10 proposal that was advanced by Mr. Stephens?

11 A. I am.

12 Q. Did you present any rebuttal testimony
13 directly responding to that proposal?

14 A. No.

15 Q. You had the opportunity to review that
16 prior to submitting your rebuttal testimony, though?

17 A. Yes.

18 Q. Why didn't you present any rebuttal
19 testimony regarding that?

20 A. It is a largely question that is directed
21 to how customers would respond and how customers can
22 self-select certain enrollment windows that are best

1 addressed by the utility witness that could evaluate
2 that proposal.

3 Q. In response to some questions by Mr. Fosco
4 you said that you had an opportunity to review the
5 practicality of that proposal?

6 JUDGE JONES: Are these ones you state you were
7 going to ask anyway?

8 MR. TOWNSEND: Yeah, I was going down this line
9 already, but this is new information. As I just
10 indicated, this is information that just came out
11 that she had the opportunity to present earlier.

12 JUDGE JONES: I mean your questions about Mr.
13 Fosco's cross and the answers to his cross.

14 MR. TOWNSEND: Yeah, we still were going down
15 this line, yes.

16 JUDGE JONES: These are questions you were
17 going to ask anyway?

18 MR. TOWNSEND: Yes.

19 JUDGE JONES: That's what I was asking. Go
20 ahead.

21 BY MR. TOWNSEND:

22 Q. And you addressed the issue with regards to

1 the practicality of implementing this proposal;

2 correct?

3 A. I addressed the ability of the time line to
4 accommodate the implementation of the proposal, yes.

5 Q. And you indicated that the time line would
6 have to occur -- for the implementation would have to
7 occur between the time that the ICC order was issued
8 and -- what was the next step?

9 A. The announcement of the tranche target on
10 September 17 in the proposed time line.

11 Q. So 80 days? I think that that's what your
12 Exhibit 1.9E indicates.

13 Did you consider whether there would
14 be time to educate the customers regarding their
15 options?

16 A. I did not personally consider that, no.

17 Q. Did you consider whether there would be
18 time for customers to make their elections after
19 being educated?

20 A. Yes.

21 Q. And how much time did you think that would
22 take?

1 A. I consulted with representatives from the
2 utilities, and we believe that a window -- I'll just
3 check the exhibit for a second. That there were be
4 time to have the pre-qualification process if there
5 were a window open of over three weeks that would end
6 by, say, September 7, and then that would allow
7 analysis of the results from the pre-qualification
8 and the determination of the tranche target later on.

9 Q. So you are assuming that there would be an
10 order issued on August 6 and all of the customers'
11 elections would be returned to the utility and
12 processed by September 7?

13 A. Yes.

14 Q. How long did you anticipate it would take
15 for the utilities to develop the communication piece
16 to the customers with regards to this election?

17 A. I think the utility witnesses should answer
18 that.

19 Q. You indicated that you thought that there
20 was sufficient time. What was your assumption with
21 regards to how long it would take the utilities to
22 develop a communication piece to go to the customers

1 with regards to this proposal?

2 A. I can not make assumptions about that.

3 Q. You recognize that is an important
4 component here, that a communication piece be
5 established; right?

6 A. Right.

7 Q. And that communication piece would have to
8 be mailed to the customers; right?

9 A. I am not aware of the process by which that
10 happens. As I stated, I did not say anything about
11 the practicality in general and all the steps, simply
12 whether it could be worked into the time line that
13 had been proposed in my testimony.

14 Q. So with regards to your time line, all you
15 are saying is that, if you get the enrollment forms
16 from the customers by September 7, you believe that
17 you could still make the date of September 17 for
18 announcing the tranche targets?

19 A. Right.

20 Q. And you are not providing any testimony of
21 what leads up to September 7; correct?

22 A. That is correct.

1 Q. And between September 7 and September 17,
2 underneath the modified proposal, the proposal as
3 modified by the utilities, you and the utilities
4 would have to determine whether there was sufficient
5 interest in each of the seven-day auction and the
6 20-day auction; correct?

7 A. The seven and 20-day products within the A
8 and the LFP utilities, auction manager and staff;
9 yes.

10 Q. And it is possible that there could be
11 insufficient interest in the seven-day auction;
12 correct?

13 A. Seven-day product, yes.

14 Q. And it is possible that there could be
15 insufficient interest in the 20-day product; correct?

16 A. Given that that's where customers would
17 default if they did not make an election on the seven
18 and 20-day, I don't believe that's true.

19 Q. So your understanding is that customers
20 would have to affirmatively state that they wanted to
21 opt into the seven-day?

22 A. Yes.

1 Q. But they wouldn't affirmatively state that
2 they want to opt into the 20-day?

3 A. That's my understanding of the proposal by
4 the utilities, yes.

5 Q. And it is possible that as a result of the
6 responses that are received, that there will be
7 insufficient interest in the 20-day auction product;
8 correct?

9 A. If everyone chose seven days, that would be
10 correct; yes.

11 Q. And what would happen in that circumstance?

12 A. There would be -- I haven't thought about
13 that.

14 Q. And if there was insufficient interest in
15 the seven-day auction product, there would have to be
16 customer notification of that as well; correct?

17 A. I don't know that, but I presume that's
18 true.

19 Q. Well, the customers would have to know what
20 their enrollment window was at some point; right?

21 A. Right, so there would have to be
22 notification regardless of the results of the

1 pre-qualification.

2 MR. TOWNSEND: No further questions.

3 JUDGE JONES: Mr. Robertson?

4 MR. ROBERTSON: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. ROBERTSON:

7 Q. Dr. LaCasse, my name is Eric Robertson. I
8 represent the Illinois Industrial Energy Consumers.
9 I would like to refer you to pages 54 and 55 of your
10 direct testimony, Auction Manager Exhibit 1.0,
11 beginning on line 188 and continuing over to line
12 193. Are you there?

13 A. Yes.

14 Q. Now, there you talk about the initial
15 reaction of suppliers to prepare to complete on a
16 particular product. And you suggest that suppliers,
17 regardless of which product they are going to bid on,
18 represent potential competitions for all products; is
19 that correct?

20 A. That is correct.

21 Q. And you also suggest that diversity of
22 bidder interests works to create competitive

1 environments for each product; is that correct?

2 A. That is correct.

3 Q. Now, would you agree that the ability of
4 not only tranche participants to switch from one
5 ComEd product to another but the ability of auction
6 participants to switch from a ComEd product to an
7 Ameren product would also have those same benefits?

8 A. Yes.

9 Q. And it would also have the potential to
10 lead to a wider pool of suppliers; is that correct?

11 A. Greater pool of suppliers than what?

12 Q. Than would otherwise be the case in the
13 face of an inability to switch from an Ameren product
14 to a ComEd product.

15 A. Can you repeat the question?

16 Q. Yes. Would you agree that by having the
17 ability to switch from a ComEd product to an Ameren
18 product or an Ameren product to a ComEd product,
19 there is, all else equal, the potential for a greater
20 pool of suppliers than would otherwise be the case in
21 the absence of such an ability?

22 A. No.

1 Q. So your suggestion here about the wider
2 pool of suppliers is specific to the blend of
3 one-year and three-year contracts; is that correct?

4 A. The wider pool of suppliers for a blend of
5 one-year and three-year contracts here is being
6 contrasted to a situation where there is only three
7 years. So it is contrasted to what would have
8 happened in the recommendation to the Commission
9 order in the previous docket. So this is expanding
10 the flow of products.

11 Q. Now, at the bottom of page 51 and the top
12 of page 52 of your direct testimony, beginning at
13 line 1122 and continuing over to line 1124, you
14 suggest that from the customer standpoint,
15 recommendations -- strike that.

16 MR. ROBERTSON: I have no further questions.
17 Thank you. Thank you, Dr. LaCasse.

18 THE WITNESS: Thank you.

19 JUDGE JONES: Any redirect?

20 MR. RIPPPIE: Can we have a minute?

21 (Pause.)

22 I will be brief.

1 REDIRECT EXAMINATION

2 BY MR. RIPPKE:

3 Q. Do you recall during your cross examination
4 by Ms. Hedman you were asked a series of questions
5 about information that you may or may not have
6 reviewed with respect to reaching a conclusion
7 concerning the competitiveness of the auctions?

8 A. Yes.

9 Q. Do you need to know how many Enron, former
10 Enron, employee traders are employed by a supplier in
11 order to know whether the auction is competitive?

12 A. I don't believe so.

13 Q. Do you need to determine information from
14 the PQRs that you did not review in order to assess
15 whether or not the auction was competitive?

16 A. I don't believe so.

17 Q. Who is responsible for determining whether
18 the FERC market power rules are being respected?

19 A. FERC.

20 Q. Do you believe that the absence of any of
21 the information that Ms. Hedman discussed with you,
22 including the three examples I have discussed and I

1 believe allegations with respect to California and
2 Texas, limited or impaired your ability to reach a
3 conclusion concerning the competitiveness of the
4 auction?

5 A. I do not.

6 Q. Do you recall examination by Ms. Hedman
7 about whether or not you had conducted a survey of
8 suppliers to assess why maintaining the
9 confidentiality of certain auction data was
10 beneficial?

11 A. Can you repeat that?

12 Q. Sure. Do you recall questioning by
13 Ms. Hedman where she inquired whether you had
14 conducted a survey of suppliers about why keeping
15 certain auction data confidential was beneficial?

16 A. Yes.

17 Q. Do you believe that it is necessary to
18 conduct a survey in order to reach that conclusion?

19 A. No, I do not.

20 Q. Why not?

21 A. Because I think that we know -- or let me
22 start over. We understand that bidders that

1 participate in the auction will assemble certain
2 wholesale products to be able to bid in the auction.
3 We understand their process in doing that. And we
4 can infer that if their position in the auction was
5 revealed than it would have, they would be in a worse
6 bargaining position to be able to put their supplier
7 arrangements together, either before the auction or
8 afterwards. And that in so impairing them, they
9 would not be able to submit bids that are as good as
10 they would otherwise.

11 MR. RIPPIE: Thank you very much, Dr. LaCasse.
12 That's all I have.

13 JUDGE JONES: Recross? All right. Thank you,
14 Dr. LaCasse.

15 (Pause.)

16 JUDGE WALLACE: We will take a five-minute
17 break before we get to Mr. McNeil.

18 (Whereupon the hearing was in a
19 short recess.)

20 JUDGE WALLACE: Back on the record.
21 Mr. Russell?

22 MR. RUSSELL: Yes, our next witness is

1 Mr. William McNeil.

2 JUDGE WALLACE: Go ahead.

3 WILLIAM P. McNEIL

4 called as a witness on behalf of Commonwealth Edison
5 Company, having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RUSSELL:

9 Q. Mr. McNeil, can I direct your attention to
10 a document that has been identified for the record as
11 ComEd 1.0, the direct testimony of William P. McNeil,
12 and ask you was that document prepared by you or
13 under your supervision and direction?

14 A. Yes, it was.

15 Q. Are there any changes you want to make to
16 the document at this time?

17 A. Yes, there is one change I would like to
18 make. On the bottom of page 21 it relates to the
19 last sentence in Footnote 3. I would like that
20 sentence to be changed to read, "Furthermore," insert
21 the words "all of Ameren's," scratch the designation
22 "BGS-LFP," "customers with a peak demand above three

1 megawatts were provided an enrollment window," and
2 insert the words "for BGS-LFP of 30 days, not 50
3 days."

4 So the sentence would now read,
5 "Furthermore, all of Ameren's customers with a peak
6 demand above three megawatts were provided an
7 enrollment window for BGS-LFP of 30 days, not 50
8 days."

9 Q. Any other changes?

10 A. No.

11 Q. With that change is the document true and
12 correct?

13 A. Yes.

14 Q. Let me direct your attention to another
15 document identified as ComEd Exhibit 1.1. Is that
16 document identified and described in your direct
17 testimony?

18 A. Yes, it is.

19 MR. RUSSELL: And I note for the record that
20 ComEd Exhibits 1.0 and 1.1 were filed March 15, 2007,
21 e-Docket number 79401.

22 Q. Let me also then direct your attention to

1 another document identified as Commonwealth Edison
2 Exhibit 2.0 Corrected, the corrected rebuttal
3 testimony of William P. McNeil, and I ask if that
4 document was prepared by you or under your
5 supervision and direction?

6 A. Yes, it was.

7 Q. And do you have any changes to make to that
8 document at this time?

9 A. No, I do not.

10 Q. Let me direct your attention to two other
11 documents identified as Commonwealth Edison Exhibits
12 2.1 and 2.2 and ask are those documents identified
13 and described in your corrected rebuttal testimony?

14 A. Yes, they are.

15 Q. If I were to ask you the questions
16 contained in your direct and corrected rebuttal
17 testimony today, would your answers be the same?

18 A. Yes, they would be.

19 Q. Then I note that Commonwealth Edison
20 Exhibit 2.0 Corrected was filed April 11, 2007,
21 e-Docket number 80273, Commonwealth Edison Exhibits
22 2.1 and 2.2 were filed April 6, 2007, e-Docket number

1 80152.

2 With that I would move for admission
3 of Commonwealth Edison Exhibits 1.0, 1.1, 2.0, 2.1
4 and 2.2?

5 JUDGE WALLACE: Are you going to file a
6 corrected version of 1.0 with that footnote change.

7 MR. RUSSELL: Yes, we will.

8 JUDGE WALLACE: All right. Are there any
9 objections to those exhibits?

10 Hearing no objection, ComEd Exhibits
11 1.0, 1.1, 2.0, 2.1 and 2.2 are admitted.

12 (Whereupon ComEd Exhibits 1.0,
13 1.1, 2.0, 2.1 and 2.2 were
14 admitted into evidence.)

15 JUDGE WALLACE: And does anyone have cross of
16 Mr. McNeil? Well, Ms. McKibbin?

17 MS. McKIBBIN: I have just a short amount.

18 CROSS EXAMINATION

19 BY MS. McKIBBIN:

20 Q. Good evening, Mr. McNeil.

21 A. Good evening.

22 Q. I am Anne McKibbin with the Citizens

1 Utility Board. I just have a few questions.

2 If you could refer to your rebuttal
3 testimony, the sentence beginning at the top of page
4 23, please?

5 A. Okay.

6 Q. In that Q and A you refer to a proposal to
7 construct a separate auction product for the
8 residential and small load customer group. And you
9 state that ComEd believes that this proposal is
10 reasonable; is that correct?

11 A. Yes, that's correct.

12 Q. Are you generally familiar with Staff
13 witnesses Kennedy and Zuraski's direct testimony
14 discussing the need to collect hourly metering data
15 to implement proposals like that?

16 A. Yes, generally.

17 Q. And are you familiar that they suggest as
18 one option taking a representative sample of hourly
19 metering data to compute hourly load served?

20 A. Yes.

21 Q. And is that something that ComEd would be
22 able to implement?

1 A. I think we are able to implement this
2 proposal because, the way the load obligation for the
3 CPP-B products are determined, is to take the total
4 load minus the hourly load minus the annual load,
5 which all have interval meters, and that leaves the
6 residual for the blended load.

7 And what we would be doing in this
8 proposal would be simply allocating the blended load
9 between the customers below 100 kW, including the
10 residential customers and the non-residential
11 customers from 100 to 400.

12 We do have representative samples of
13 the hourly data for the customers and we think we can
14 get a fairly accurate representative profile for that
15 100 to 400. So we believe this could be implemented.

16 MS. McKIBBIN: Thank you very much, and that's
17 all I have.

18 JUDGE WALLACE: Ms. Hedman?

19 CROSS EXAMINATION

20 BY MS. HEDMAN:

21 Q. Good afternoon, Mr. McNeil.

22 A. Good afternoon.

1 Q. For the record I am Susan Hedman on behalf
2 of the People of the State of Illinois.

3 On page 7 of your testimony you
4 indicate that you have appended to your testimony
5 Commonwealth Edison's proposed CPP, the
6 supplier-forward contract to be used in the future;
7 is that correct?

8 A. Page 7 of my direct?

9 Q. Your direct.

10 A. Yes.

11 Q. And then in your rebuttal testimony you
12 indicate that you are providing a slightly revised
13 version of that as ComEd Exhibit 2.1 with some
14 additional changes?

15 A. That is correct.

16 Q. I would like to direct your attention to
17 page 61 of Exhibit 2.1, and specifically to provision
18 15.8.

19 A. Yes.

20 Q. Now, are you familiar with Ameren's BGS-FP
21 supplier-forward contracts?

22 A. Generally, yes, the Ameren contracts in

1 general mirror the ComEd contracts. But I am not as
2 familiar with theirs as I am with ours.

3 Q. Do you know whether the Ameren contract
4 that Mr. Nelson presented this morning has the same
5 provision 15.8?

6 A. I am not positive. I believe it does.

7 MS. HEDMAN: May I approach the witness?

8 JUDGE WALLACE: Yes.

9 (Whereupon a document was
10 presented to the Witness.)

11 BY MS. HEDMAN:

12 Q. Mr. McNeil, would you read Section 15.8 of
13 the proposed Ameren forward contract?

14 A. 15.8?

15 Q. Yes.

16 A. Sure. "Changes in Rules or Tariffs. In
17 the event of a material change during the term of any
18 rules or tariffs affecting the parties' obligations
19 under this agreement from the state of such rules or
20 tariffs on the effective date, the parties'
21 obligations under this agreement shall change as well
22 in a manner in keeping with the balance of risk,

1 rewards and costs currently set forth in this
2 agreement, including above all the principle that the
3 BGS-FP supplier bears the risk of changes related to
4 the delivery of BGS-FP supplied to the delivery point
5 and the company bears the risk of changes related to
6 the delivery of BGS-FP supplied from the delivery
7 point to BGS-FP customers. If deemed necessary by
8 any party, the parties shall revise this agreement to
9 reflect such changes."

10 Q. And is that the same as your Section 15.8?

11 A. No, it is not.

12 Q. Do you have any provision in your proposed
13 Schedule 4 of that contract that mirrors that
14 language?

15 MR. RUSSELL: I think at this point I am going
16 to object to the line of questioning. There is no
17 issue in this case, no party has proposed any change
18 or any revisions to Section 15.8 of our agreement.
19 So it is not an issue in the case. Mr. McNeil is not
20 proposing it. These are provisions that are
21 hold-overs from the 2006 auction, and it is not in
22 this case, it is not in his testimony, and I object

1 to this line of questioning.

2 JUDGE WALLACE: Ms. Hedman?

3 MS. HEDMAN: Well, let me just say that I think
4 that this is an issue in this case. And if I could
5 be allowed to explain why it is an issue in this
6 case.

7 At the close of the record in the
8 procurement dockets in 2005 the standard forward
9 contracts had not been finalized. And in the order
10 issued by the Commerce Commission on January 24,
11 2006, in those two dockets, the Commission stated
12 that Commonwealth Edison Company and the Ameren
13 companies were working together to reconcile the
14 differences in the standard supplier-forward
15 contracts.

16 And in the order Commonwealth Edison
17 was directed to file its standard forward contracts
18 with the Commission, as was Ameren, within 60 days of
19 the posting of the draft SFC on the auction website.
20 And ComEd filed its SFCs with the Commission on March
21 31.

22 And to the extent that unresolved

1 issues remain, Commonwealth Edison was directed by
2 the Commission to file a petition identifying those
3 issues and seek resolution by the Commission by April
4 21.

5 On April 20 Commonwealth Edison sent a
6 letter, which I have here, to the Commission
7 representing that it would not be making such a
8 filing because there were no longer any unresolved
9 issues.

10 On May 15, approximately three weeks
11 later, the Ameren and ComEd standard forward
12 agreements appeared on the auction website and were
13 filed with the Commission. The Ameren contract
14 contained the provision which Mr. McNeil just read.
15 That provision was omitted from the Commonwealth
16 Edison contract.

17 If I can not take that issue up in
18 this proceeding, I don't have a forum in which to
19 take it up. The record was closed. The matter was
20 finished in the last docket, and I have nowhere else
21 I can raise this issue.

22 MR. RUSSELL: Well, we are doing a history

1 here. We did make a compliance filing and we did
2 make the filings Ms. Hedman refers to, and nothing
3 followed from that.

4 But apart from that, we had several
5 workshops in this proceeding at which all parties
6 discussed proposed changes in this proceeding,
7 including changes to the SFCs, which we accepted
8 many. The parties had opportunity to file two rounds
9 of testimony proposing changes to the SFCs or other
10 parts of the auction, and no one has proposed any
11 changes to this paragraph. And I think in the issues
12 list that was put together there was no mention of
13 this issue in this proceeding.

14 So I think all parties had their
15 opportunity, both last year and in this proceeding,
16 to raise concerns and issues regarding this
17 paragraph. No one has done so. I think it is too
18 late to raise it, and I object.

19 JUDGE WALLACE: I am going to overrule the
20 objection. I think that the case has been made that
21 Ms. Hedman can go ahead and inquire in this line.

22 MS. HEDMAN: Thank you, Your Honor.

1 THE WITNESS: A. I believe when the Ameren and
2 ComEd utilities worked together with the Staff to
3 work out reconciled differences between the two
4 contracts, the goal was in each and every case where
5 there were differences, where there was no reason for
6 there to be a difference, that the language would be
7 harmonized so that the contracts were, to the
8 greatest extent possible, identical.

9 However, because Ameren is in MISO and
10 ComEd is in PJM, there are specific sections of each
11 contract that relate to the specific rules and issues
12 of each RTO. So there were places where the
13 contracts were not identical, primarily due to the
14 RTO rules, and the paragraph that you are looking at,
15 I believe, is one of them. That's why the numbering
16 doesn't line up between the two contracts.

17 BY MS. HEDMAN:

18 Q. Are you suggesting that PJM has in place
19 any rule that would prohibit ComEd from including a
20 provision like Ameren's 15.8?

21 A. No. I think that the reason that that
22 appeared in the Ameren contract and not in the ComEd

1 is that there were still at the time that these
2 contracts were being finalized, there were still rule
3 changes that were occurring in MISO that that
4 paragraph tried -- attempted to accommodate the fact
5 that some of those changes would cause charges to be
6 incurred by the utility and others would be billed to
7 the suppliers.

8 With PJM we accomplished that same
9 intent through a declaration of authority that was
10 executed between the suppliers and PJM and ComEd. It
11 was a three-party agreement, that specified for each
12 and every charge that PJM had who the responsible
13 party was going to be for those charges. So it was
14 not needed in the ComEd agreement.

15 Q. The provision begins, "In the event of a
16 material change during the term of any rules or
17 tariffs affecting any parties' obligations under this
18 agreement from the state of such rules or tariffs on
19 the effective date, the parties' obligation under
20 this agreement shall change as well in a manner in
21 keeping the balance of risk, rewards and costs
22 currently set forth in this agreement, including,"

1 and it gives us then an example of changes in
2 tariffs, RTO tariffs.

3 Now that I have read that to you again
4 and emphasized the language at the beginning of that
5 provision would your answer still be the same?

6 A. Yes. In the ComEd agreement the changes in
7 RTO rules is a risk that the supplier bears that's
8 defined in our agreement. And each and every
9 category, as I mentioned before, is identified in the
10 declaration of authority and was determined up front.
11 So we don't have matching language, I believe, in our
12 agreement.

13 Q. But this provision is not limited to
14 changes in tariffs by the RTO; it is very general
15 language relating to rules or tariffs affecting
16 parties' obligations?

17 MR. RUSSELL: I am going to object. Ms. Hedman
18 is just arguing with the witness at this point. He
19 has answered the question twice.

20 JUDGE WALLACE: I think you should probably
21 move on.

22

1 BY MS. HEDMAN:

2 Q. I would like to turn now to your rebuttal
3 testimony, page 29. Would it be fair to say that at
4 the bottom of page 29 that you are recommending the
5 use of a forward market price as a basis of
6 comparison with the auction price rather than the
7 real time LMPs that Dr. Rose proposes?

8 A. Yes. My point here would be that if you
9 were going to compare the auction results to a market
10 price, it should be based on forward market prices as
11 opposed to historical LMP prices.

12 Q. And I take it that your calculations lead
13 to a price that is 48 and 49 dollars per megawatt
14 hour; is that correct?

15 A. That's correct, for block energy.

16 Q. And how do those compare with the auction
17 prices?

18 A. Well, the auction price, which was for a
19 different product, was 63.76 on average for the
20 blended customers.

21 Q. And so the percentage difference would be
22 approximately 20 percent?

1 A. Yeah.

2 Q. So then going to page 39 of your rebuttal
3 testimony, on page 39 and going over to the next page
4 you have a list of costs and risks that I gather
5 would in your view make up that difference between
6 the forward market price and the auction price?

7 A. Yes. I think these are all costs that are
8 not considered in just the forward market price.
9 They need to be considered when you are comparing to
10 the auction price.

11 Q. And would this list -- have you reviewed
12 the testimony submitted by Mr. Nelson in rebuttal
13 that was discussed this morning in cross examination?

14 A. Yes.

15 Q. And would you agree that this list is
16 substantially the same list of factors that he
17 identified?

18 A. Yes.

19 Q. Now, there are one, two, three, four, five,
20 six components here. Have you made a calculation as
21 to the costs to suppliers associated with
22 load-following?

1 A. I know from my experience approximately
2 what the cost of load-following is. I didn't do a
3 specific analysis for this. But load-following
4 should add, based on the forward prices for peak and
5 off-peak power, should add 12 to 15, 16 percent to
6 the around-the-clock price for load weighting.

7 Q. And how about customer migration risk?

8 A. I don't have an estimate for that, other
9 than the difference between the CPP-A and the B
10 product which I believe is entirely migration risk.

11 Q. And what is the magnitude of that
12 difference?

13 A. About \$27 for the ComEd products, \$20.18, I
14 believe, for the Ameren products.

15 Q. And have you made an analysis of the
16 magnitude of the costs associated with counter-party
17 credit risks?

18 A. No, I have not.

19 Q. And the phraseology you use is
20 counter-party credit risk. I believe Mr. Nelson
21 talks about utility credit risk. Is your reference
22 there to both supplier and utility credit risk?

1 A. In the context of the auction price it
2 would be the utility's credit risk from the
3 supplier's perspective?

4 Q. And have you made any calculations
5 quantifying the costs associated with potential
6 changes in laws and regulations?

7 A. No.

8 Q. And do you have an analysis that would
9 quantify the administrative and legal costs that you
10 list there?

11 A. No. The only item that I would note there
12 is that there are costs that the suppliers have to
13 pay directly to participate in the auction that go to
14 cover administrative costs of running the auction.
15 For last year's auction that was approximately
16 \$11,000 per tranche that they won. So it is based on
17 how much of the volume they won. But that's a cost
18 that is an example of an administrative cost that is
19 not included.

20 Q. That's not included in the price?

21 A. That's not included in Dr. Rose's analysis.

22 Q. But that's not included in the auction

1 price either, is it?

2 A. Well, it is a cost to the suppliers. So,
3 you know, how they recover it, I mean, it is presumed
4 to be a cost, that the suppliers are bidding so that
5 they will cover their costs. But it is not
6 explicitly spelled out in the price.

7 Q. And then, finally, you identify uncertainty
8 regarding the structure of the capacity market. And
9 I believe elsewhere in your testimony you talk about
10 the imposition of RPM in the interval between when
11 the auction occurred and the present in PJM.

12 Do you have a quantification of the
13 uncertainty?

14 A. Not of the uncertainty, no.

15 Q. At the bottom of page 41 of your testimony,
16 going over to the next page, you state that in its
17 recent 2006 State of the Market Report the PJM
18 monitoring unit concluded that energy and capacity
19 market results in PJM were competitive in 2006?

20 A. Yes.

21 Q. And that sentence is responsive to what
22 question? If I may rephrase, that sentence

1 essentially is your explanation as to why you don't
2 believe that the difference between the wholesale
3 price and the auction price is due to factors
4 relating to an absence of full competition; is that
5 correct?

6 A. Yes.

7 Q. Mr. McNeil, can you remind me the date on
8 which you filed your rebuttal testimony?

9 A. April 6, I believe, was the date that the
10 first rebuttal was filed and it was corrected, I
11 believe, a couple days later.

12 (Whereupon AG Cross Exhibit 5
13 was marked for purposes of
14 identification as of this date.)

15 Q. Mr. McNeil, I have shown you a document
16 that has been marked as AG Cross Exhibit 5. Is this
17 a statement by the PJM market monitor made on April
18 5, 2007?

19 A. That's what it is labeled. This is the
20 first time I have seen it, but it is labeled a
21 statement, yes.

22 Q. And did you have an opportunity to review

1 that statement and take into account the substance of
2 that statement prior to filing your rebuttal
3 testimony?

4 A. No, I did not.

5 Q. And since then have you become aware that
6 the PJM market monitor, in a statement presented to
7 FERC, raised questions about, quote, the independence
8 and in fact the viability of the PJM MMU, and that he
9 stated that that issue has reached very significant
10 proportions in PJM?

11 MR. RUSSELL: I am going to object to this line
12 of questions. It is an out-of-court statement by
13 some individual not a party or a person in this
14 proceeding. It is hearsay.

15 MS. HEDMAN: Your Honor, Mr. McNeil relies on
16 the conclusions of the market monitor, the PJM market
17 monitor, as the basis for his conclusion that there
18 was no anti-competitive behavior -- as a partial
19 basis for his conclusion that there was no
20 anti-competitive behavior in PJM that affected the
21 auction. And almost simultaneously with the time
22 that he filed his testimony, the PJM market monitor

1 in a formal presentation before the Federal Energy
2 Regulatory Commission made statements that directly
3 contradict -- well, I won't characterize it -- made
4 statements relating to this topic. And at this point
5 I am merely asking Mr. McNeil if he is aware of those
6 statements.

7 MR. RUSSELL: Mr. McNeil relied upon an
8 official report of the PJM market monitor that was
9 passed by FERC tariffs to be written and filed with
10 great credibilities than some statement that he is
11 now sought to be questioned about.

12 JUDGE WALLACE: The objection is overruled. Go
13 ahead and answer the question, please.

14 THE WITNESS: A. I am generally aware of this
15 issue. I haven't followed it in detail. I am also
16 aware that in subsequent testimony that Joe Bowring
17 has been asked, if all of his concerns were remedied,
18 would it have changed in any way his conclusions that
19 he reached in this report. And I am told his answer
20 was no.

21 So I don't think it would -- while I
22 haven't reviewed all of this testimony specifically,

1 I am not aware of anything that specifically would
2 change the conclusion that the Market Monitoring Unit
3 reached in PJM for 2006.

4 JUDGE WALLACE: I would like a point of
5 clarification. You are talking about the PJM market
6 monitor or the Illinois market monitor?

7 THE WITNESS: The PJM market monitor.

8 JUDGE WALLACE: I am sorry, in your testimony.

9 THE WITNESS: The PJM Market Monitoring Unit is
10 the sentence that Ms. Hedman is pointing to. So
11 that's the report that I cited here.

12 JUDGE WALLACE: All right. I must be looking
13 at the wrong line.

14 THE WITNESS: It is the last sentence of the
15 testimony.

16 JUDGE WALLACE: Thank you. It's the touch pad.

17 BY MS. HEDMAN:

18 Q. So you are familiar with this statement and
19 subsequent statements that the market monitor, Mr.
20 Bowring, made on this statement?

21 A. Yes, from what I have read in electronic
22 media, just following it a little bit.

1 Q. If you could turn to page 2 and paragraph
2 10?

3 A. Is this direct or rebuttal?

4 Q. No, no, of Mr. Bowring's statement, AG
5 Cross Exhibit 5.

6 A. Okay.

7 Q. You have just testified that it is your
8 understanding that Mr. Bowring indicated that the
9 2006 State of the Market Report was not jeopardized;
10 is that correct?

11 A. My understanding is that what he has been
12 asked is would his conclusions about the market being
13 competitive be different if his concerns that he is
14 phrasing were all addressed, and his answer was no.
15 I don't know that that covers everything in the
16 report or just the conclusion about the market being
17 competitive.

18 Q. Now, in paragraph 10 does Mr. Bowring, the
19 market monitor, say that "PJM management has taken a
20 series of actions towards the Market Monitoring Unit
21 which I," meaning Mr. Bowring, "believe are
22 inconsistent with independence and with the

1 objectives of the MMU as defined in the tariff.

2 "As examples, these include ordering

3 me to modify the State of the Market Report,

4 preventing me from making a presentation to a

5 membership committee on the exception of certain

6 interfaces to mitigation, when PJM management

7 disagreed with my analysis, and delaying the release

8 of an MMU report regarding the regulation market

9 based on management disagreements with our

10 conclusions;" is that correct?

11 A. Yes.

12 JUDGE JONES: Is what correct? Is that what

13 that says?

14 MS. HEDMAN: Is that what that says, yes.

15 I don't think I have anything further.

16 But, Your Honor, I do have a question, an evidentiary

17 question, if I may pose one?

18 JUDGE WALLACE: All right.

19 MS. HEDMAN: In my discussion with Mr. McNeil

20 about the contract, the standard forward contract,

21 and in replying to the objection about the reason

22 that I am raising this issue in this proceeding, I

1 read from a letter that Commonwealth Edison submitted
2 in Docket 05-0159.

3 And I suppose because that is a
4 document filed in a docket, I can simply cite it. I
5 am wondering if Your Honor would prefer for
6 convenience if I would offer it as an exhibit in this
7 docket.

8 JUDGE WALLACE: That would probably be more
9 convenient.

10 MR. RUSSELL: The letter I think I have
11 concerns about. It isn't relevant to this proceeding
12 when there is no issue on that.

13 JUDGE WALLACE: All right. Do you have an
14 objection to its admission?

15 MR. RUSSELL: I continue my objection that it
16 is not relevant, outside of the scope of this
17 proceeding, outside the scope of his testimony.

18 JUDGE WALLACE: All right. Let's mark it and
19 we will take that under advisement.

20 MS. HEDMAN: Then I would mark this as AG Cross
21 Exhibit 6, and I would like to move the admission of
22 AG Cross Exhibits 5 and 6.

1 (Whereupon AG Cross Exhibit 6
2 was marked for purposes of
3 identification as of this date.)

4 MR. RUSSELL: And we also have objections to AG
5 Cross Exhibit 5. As I expressed before, these are
6 simple out-of-court statement by an individual. They
7 are hearsay. They do not have the same safeguards,
8 same credibility, that the official PJM report has
9 that Mr. McNeil relied upon. It is objectionable and
10 will not help them and we object.

11 MS. HEDMAN: Your Honor, if I may reply?

12 MR. McGUIRE: Your Honor, may I interpose an
13 objection in support of ComEd?

14 JUDGE WALLACE: All right.

15 MR. McGUIRE: I guess if it is going to be
16 offered for the truth of the matter asserted in the
17 document, we would object to it as well. It is one
18 thing to ask if he is aware of it. It is another
19 thing to use it as substantive evidence. The
20 potential for abuse seems pretty high without the
21 ability to cross exam Mr. Bowring.

22 JUDGE WALLACE: You may reply.

1 MS. HEDMAN: Your Honor, this is a document
2 filed by the PJM market monitor in a FERC docket,
3 FERC Docket AD 07-8000 on April 5, 2007. It is a
4 document filed with the Federal Regulatory Agency. I
5 think both the providence and the -- the providence
6 of it makes it something that would allow the parties
7 to ask the Commission to take administrative notice
8 of it, even if it weren't in this proceeding. And I
9 think entering it as a cross exhibit is in fact just
10 a convenience.

11 JUDGE WALLACE: The objection to AG Cross
12 Exhibit 5 is sustained and it will not be admitted.
13 I don't believe a sufficient foundation was
14 established through this witness that would allow it
15 to be admitted.

16 And then we will take AG Cross Exhibit
17 6 under advisement for the time being.

18 MR. FOSCO: Your Honor, may Staff proceed next
19 then?

20 MR. TOWNSEND: Just go ahead. Just don't hold
21 it against me.

22 JUDGE WALLACE: Don't ask all of his questions.

1 CROSS EXAMINATION

2 BY MR. FOSCO:

3 Q. My name is Carmen Fosco. I am one of the
4 attorneys representing Staff and I have just a few
5 questions for you.

6 Mr. McNeil, are you familiar with the
7 proposals by Staff witnesses Dr. Kennedy and
8 Mr. Zuraski to use a blend of one, two and three-year
9 contracts for the auction?

10 A. Yes.

11 Q. And do you have any opposition to that
12 proposal?

13 A. No.

14 MR. FOSCO: Thank you. That's all my
15 questions.

16 JUDGE WALLACE: All right. Mr. Townsend?

17 CROSS EXAMINATION

18 BY MR. TOWNSEND:

19 Q. Good evening, Mr. McNeil. Chris Townsend
20 appearing on behalf of the Coalition of Energy
21 Suppliers.

22 A. Good evening.

1 Q. You were a witness in the initial auction
2 proceeding, ICC Docket Number 05-0159, correct?

3 A. Correct.

4 Q. Are you familiar with ComEd's position at
5 the conclusion of that initial auction proceeding
6 regarding the number of days that was appropriate for
7 the enrollment window?

8 A. Yes.

9 Q. Was it ComEd's position at the conclusion
10 of that initial auction proceeding that the
11 enrollment window following the 2006 auction should
12 be 50 days and that subsequent enrollment windows
13 should be 45 days in length?

14 A. Yes.

15 Q. And the 45 days in length was to apply not
16 just to the subsequent auction proceeding but to all
17 subsequent auction proceedings; correct?

18 A. That's correct.

19 Q. Was it ComEd's belief at the conclusion of
20 the initial auction proceeding that endorsing a
21 45-day window for subsequent auctions struck an
22 appropriate balance between the goals of reducing

1 risk suppliers face in their fixed price bids and
2 providing enough time for customers to consider their
3 alternatives?

4 A. I think our position was that we recognize
5 that parties were pretty far apart on this issue, and
6 we were trying to find some common ground that
7 parties could agree to. And that's how we ended up
8 with that middle ground.

9 Q. It was a compromise proposal; right?

10 A. It was a compromise proposal.

11 Q. And ComEd concluded that that proposal
12 reasonably balanced customer flexibility, avoiding
13 excessive risk premiums and auction bids, and
14 avoiding interference with the auction time line;
15 correct?

16 A. Those are certainly our goals. I don't
17 think we knew at the time exactly how much risk there
18 would be associated with that window.

19 Q. But that was your conclusion at that time;
20 correct? And if you would like, I can give you
21 something that might refresh your recollection.

22 A. I will accept that.

1 Q. ComEd believed -- I am sorry, strike that.

2 At that time did ComEd believe that
3 customers with larger demands are more sophisticated
4 than customers with smaller demands?

5 A. In general, yes.

6 Q. And at that time did ComEd know that as of
7 the time of the second auction that customers would
8 have additional experience with the post-2006 rates?

9 A. Well, they all would have had at least one
10 year of experience, yes.

11 Q. And at that time there were allegations
12 that a longer enrollment window would result in
13 increased bids in the auction; correct?

14 A. Correct.

15 Q. And those were all factors that the
16 Commission also considered in concluding that the
17 enrollment window should be shortened from 50 to
18 45-days in the subsequent auctions; correct?

19 A. Yes.

20 Q. And the Commission actually commended the
21 parties for reaching an agreement on that proposal;
22 correct?

1 A. I believe so.

2 Q. You refer to CPP-A eligible customers as
3 being generally sophisticated purchasers of
4 electricity, as one of your justifications for
5 proposing the 20-day enrollment window; correct?

6 A. Correct.

7 Q. You recognize that CPP eligible customers
8 are not all sophisticated purchasers of electricity;
9 correct?

10 A. Correct.

11 Q. Did ComEd present any study in which it
12 sought to quantify the percentage of CPP-A eligible
13 customers that are not sophisticated purchasers of
14 electricity?

15 A. No.

16 Q. The group of CPP-A eligible customers
17 includes customers with demands as low as 400 kW;
18 correct?

19 A. Correct.

20 Q. And they only have to reach that peak of
21 400 kW one time in the year prior to the auction;
22 correct?

1 A. That's correct.

2 Q. You are aware that Ameren treats the 400 kW
3 to one megawatt customers differently than ComEd
4 does?

5 A. Yes.

6 Q. For example, there is no enrollment window
7 for that size customer in Ameren's service territory;
8 correct?

9 A. That's correct.

10 Q. Would you agree that many more customers
11 entered into competitive contracts in 2006 than in
12 any prior year?

13 A. Yes.

14 Q. Between the 2006 and 2008 auctions new
15 businesses will locate in ComEd's service area;
16 right?

17 A. Yes.

18 Q. And there likely will be turnover within
19 companies so that the person who negotiated the
20 energy supply contract in 2006 might not be there in
21 2008; correct?

22 A. Correct.

1 Q. Would you agree that for some customers the
2 2008 auction experience might be their first
3 experience in negotiating with a third-party
4 supplier?

5 A. Yes.

6 Q. And that's true for even CPP-A eligible
7 customers; right?

8 A. Yes.

9 Q. So it is possible for many customers that
10 they have negotiated only one competitive supply
11 contract or none at all; right?

12 A. That's possible, yes.

13 Q. You don't propose a different enrollment
14 window for customers who have little or no
15 experience, do you?

16 A. No.

17 Q. Did you present a study quantifying the
18 level of experience that customers have based upon
19 the demands of those customers?

20 A. No.

21 Q. Would you agree that many changes have been
22 proposed to the terms and conditions of the annual

1 product?

2 A. Yes.

3 Q. So to the extent that customers have had an
4 opportunity to become familiar with their post-2006
5 choices, they may have to become familiar with new or
6 different options; right?

7 A. Correct.

8 Q. To the extent that customers have
9 experience with the length of the enrollment window
10 in a post-2006 environment, they have experience with
11 a 50-day enrollment window; correct?

12 A. Correct.

13 Q. And that enrollment window was in September
14 and October; correct?

15 A. Yes.

16 Q. And prior to 2006 the enrollment windows
17 for the PPO were 75-days in length; correct?

18 A. Yes.

19 Q. So customers have never experienced an
20 enrollment window of 20 days for an annual product
21 from ComEd, have they?

22 A. No.

1 Q. They have never had an enrollment window in
2 February for competitive supply, have they?

3 A. I am not sure, but I think there was one
4 year where the PPO enrollment window was in February.

5 Q. Perhaps once in the last decade?

6 A. Perhaps.

7 Q. Would you agree that it is possible that
8 some customers might need more than 20 days to make a
9 decision regarding their energy supply?

10 A. Yes.

11 Q. Are you aware that some companies only have
12 monthly board meetings?

13 A. Yes.

14 Q. And would you think that this is an issue
15 that they might address in their monthly board
16 meetings?

17 A. Yes.

18 Q. And with a 20-day window it is possible
19 that the entire enrollment window could go in between
20 their monthly board meetings?

21 A. Yes.

22 Q. Are you familiar with the testimony of IIEC

1 witness Stephens which suggests that governmental and
2 institutional customers might need longer enrollment
3 windows?

4 A. Yes.

5 Q. You haven't proposed a longer enrollment
6 window for governmental and institutional customers,
7 have you?

8 A. No, we haven't.

9 Q. Following the 2006 auction did you see that
10 some customers in fact took more than 20 days?

11 A. We don't really know how long it took for
12 them to make their decision. We know when they
13 switched, but we don't know when they started to
14 analyze the data that went into their final decision.
15 So we don't know how long it took them to make a
16 decision.

17 Q. But you did see that a significant majority
18 of customers took longer than 20 days to submit their
19 selection to ComEd; correct?

20 A. The day they made their decision was more
21 than 20 days from the start of the windows.

22 Q. Do you know what that percentage was?

1 A. No, I don't off hand.

2 Q. Did you present any survey or poll of those
3 customers that took more than 20 days inquiring
4 whether they needed the additional time?

5 A. No.

6 MR. TOWNSEND: May I approach?

7 JUDGE WALLACE: Yes.

8 Q. I am handing you what's been marked as CES
9 Cross Exhibit 5, ask you to take a look at that. And
10 hopefully this can guide our discussion with regards
11 to the product proposal by ComEd.

12 (Whereupon CES Cross Exhibit 5
13 was marked for purposes of
14 identification as of this date.)

15 For the zero to 100 kW customers ComEd
16 has proposed that they be served by a blended
17 product; correct?

18 A. Correct.

19 Q. And actually they are currently served by a
20 blended product; is that correct?

21 A. That is correct.

22 Q. And in order to select their product, they

1 automatically fall into the blended product; correct?
2 That is, if they want to make a selection, they have
3 to opt out; correct?
4 A. That's correct.
5 Q. And there is no enrollment windows for
6 those customers?
7 A. No, there is not.
8 Q. And if they go out into the competitive
9 market, they can return to the utility supply;
10 correct?
11 A. They can, yes.
12 Q. And there is a 12-month minimum stay?
13 A. That's correct.
14 Q. And for the 100 to 400 kW customers,
15 currently they also are served by the same blended
16 products; correct?
17 A. Currently, yes.
18 Q. And if they want to select --
19 MR. RUSSELL: Excuse me, can I get a
20 clarification? I am trying to follow your exhibit.
21 Your 100 to 400, also your zero to 100, it shows that
22 they were annual in the original auction. What does

1 that parenthetical mean?

2 Q. In that example it would be appropriate to
3 change that from annual to blended; is that correct,
4 Mr. McNeil?

5 A. Where? Zero to 100?

6 Q. Zero to 100 is blended.

7 A. Yes, it was in 2006 and there was no change
8 proposed. It is blended. Annual is not correct.

9 Q. And the same for the 100 to the 400 kW,
10 that also should read blended as opposed to annual?

11 A. Yes.

12 Q. And that's the exact same product for the
13 two of them; correct?

14 A. In the proposed products they would be
15 procured as separate products, but the term
16 structures are identical.

17 Q. But for 2006 they are procured as the same
18 product; correct?

19 A. As the same, yes.

20 Q. And there is no enrollment window for
21 either one of them, either under the existing or
22 under the proposed; correct?

1 A. That's correct.

2 Q. So the only difference for those two
3 classes of customers between the proposed products
4 and the 2006 products is that there would be a
5 separate blended product for the 100 to 400 kW
6 customers; correct?

7 A. That's correct.

8 Q. Now, for the 400 kW customers, all the way
9 up through the over three megawatt customers, there
10 currently is an annual product; correct?

11 A. That's correct. Over three megawatt would
12 only be those customers whose service has not been
13 competitively declared.

14 Q. And in 2006 the 400 kW to three megawatt
15 customers had a 50-day enrollment window; is that
16 correct?

17 A. That's correct.

18 Q. And you are now proposing that they have
19 either a seven or 20-day enrollment window?

20 A. Yes.

21 Q. And for the over three megawatt customers
22 who have not been competitively declared, they had a

1 30-day enrollment window in the 2006 products;
2 correct?

3 A. Correct.

4 Q. And you are also proposing a seven or
5 20-day enrollment window for them?

6 A. That's correct.

7 Q. And with regards to the opt-in versus
8 opt-out, have you proposed a change in that?

9 A. No. If I could just clarify what -- during
10 that seven or 20-day window the customers that are
11 on -- this is in the proposals -- customers that are
12 on the annual bundled rate and do nothing during the
13 window would then be committed to take service during
14 the following term. Customers that are not on the
15 service would only have that seven or 20-day window
16 to get onto it. Otherwise, they would not be on the
17 utilities' express service.

18 Q. Thank you. I imagine I won't be
19 introducing that into evidence, but hopefully it at
20 least helped us walk through the different classes
21 and we can develop a chart based off of that.

22 Would you agree that customers with

1 similar migration risks should be grouped together?

2 A. I think there is some judgment involved,
3 but we have certainly attempted to incorporate
4 migration risk as one of the factors in setting up
5 these groups.

6 Q. Would you agree that it is appropriate for
7 customers with higher migration risks to be served
8 using the annual product?

9 A. Yes.

10 Q. Would you agree that customers benefit by
11 bidders being able to switch between similar auction
12 products being offered in the ComEd and Ameren
13 auctions?

14 A. Yes.

15 Q. I would like to turn your attention to your
16 rebuttal testimony, page 24, line 533. Let me know
17 when you are there.

18 A. I am there.

19 Q. You state that most of the customers in the
20 100 to 400 kW class do not have experience taking
21 service from a RES; correct?

22 A. That's correct.

1 Q. That's no longer accurate; is it?

2 A. It is still accurate that most of the
3 customers in that group are not taking service from a
4 RES.

5 Q. Are you familiar with the most recent
6 switching statistics that ComEd has submitted to the
7 Commerce Commission?

8 A. In this group of customers the latest
9 statistics that I have seen show that about 50
10 percent of the load in that group has switched.
11 However, in terms of the customers, that's a much
12 smaller number.

13 Q. Well, let me hand you CES Cross Exhibits 6,
14 7, 8 and 9, and we will see if you can identify these
15 for us.

16 (Whereupon CES Cross Exhibits 6,
17 7, 8 and 9 were marked for
18 purposes of identification as of
19 this date.)

20 Do you have CES Cross Exhibit 6?

21 A. Yes.

22 Q. Are those the switching statistics as of

1 December 31, 2006, for ComEd?

2 A. Yes.

3 Q. And you have CES Cross Exhibit 7?

4 A. Yes.

5 Q. And does that reflect the switching

6 statistics for ComEd as of January 31, 2007?

7 A. Yes, I assume it does.

8 Q. And do you have CES Cross Exhibit 8?

9 A. Yes.

10 Q. And does that reflect the ComEd switching

11 statistics as of February 28, 2007?

12 A. Yes.

13 Q. And do you have CES Cross Exhibit 9?

14 A. Yes.

15 Q. And does that reflect the switching

16 statistics for ComEd as of March 31, 2007?

17 A. Yes.

18 Q. And can you tell us what does that say in

19 terms of the percentage of customers receiving RES

20 service in the 100 to 400 kW class as of March 31,

21 2007?

22 A. Nine thousand taking service from a RES,

1 9,068 out of 18,069, about 50 percent.

2 Q. Over 50 percent; correct?

3 A. Yeah, just over 50.

4 Q. So now most do have experience taking
5 service from a RES; correct?

6 A. Correct.

7 Q. Success. Why do customers choose to take
8 service from a supplier other than ComEd?

9 A. Well, clearly prices is one of the issues,
10 and the others may be that they get a tailored
11 offering from the suppliers that matches something
12 they are looking for.

13 Q. So it could be price, it could be product,
14 it could also be the identity of the supplier;
15 correct?

16 A. It could be, yes.

17 Q. It could be the risk associated with the
18 supplier, the credit risk of the supplier; correct?

19 A. Correct.

20 Q. You are familiar with the term "migration
21 risk premium," correct?

22 A. Yes.

1 Q. You allege that suppliers include a
2 migration risk premium because they believe that
3 customers might find a product that is offered by a
4 retail electric supplier that is more economic or
5 more attractive; correct?

6 A. Correct.

7 Q. And that could be because the price is more
8 attractive or that the product is more attractive or
9 that the supplier is more attractive to the customer;
10 correct?

11 A. Yes. Whatever the reason is, it is a fine
12 metric risk that is associated with the ability of
13 the customer to switch.

14 Q. Would you agree that one reason suppliers
15 include a migration risk premium is because they are
16 concerned that the retail market price of power
17 during the enrollment window might be more attractive
18 than the price of the utility default service?

19 A. I am sorry, could you repeat that?

20 Q. Would you agree that one reason that
21 suppliers include a migration risk premium is because
22 they are concerned that the retail market price of

1 power during the enrollment window might be more
2 attractive to the customer than the price of the
3 utility default service?

4 A. That's possible, yes.

5 Q. And there is a chance that that retail
6 market price will be more attractive on the 15th day
7 of the enrollment window; right?

8 A. Yes.

9 Q. And if the enrollment window extends for 45
10 days, there is a risk that it could occur on the 21st
11 day; right?

12 A. Correct.

13 Q. Or the 44th day?

14 A. Right.

15 Q. Compare to the enrollment window
16 established by the Commission in the initial auction
17 proceeding. Under ComEd's enrollment window proposal
18 would customers be more or less likely to benefit
19 from the market price being more attractive on the
20 15th day of the enrollment window?

21 A. I am sorry, could you repeat the question?

22 Q. So, comparing the enrollment window that

1 the Commission established of 45 days for the
2 subsequent auctions to ComEd's proposed enrollment
3 window, and looking at the 15th day of the window,
4 would customers be more or less likely to benefit
5 from the market price being more attractive on that
6 15th day of the enrollment window under ComEd's
7 proposal or would it be the same?

8 A. It would be the same.

9 Q. How about the 21st day?

10 A. Well, they would be more advantaged under
11 the 45-day window.

12 Q. How so?

13 A. Well, under the 20-day window they would
14 have had to opt into the product by the end of the
15 20th day.

16 Q. And likewise they benefit by having --
17 strike that.

18 Likewise with the 44th day; correct?

19 A. Correct.

20 Q. Did you survey customers to determine how
21 much they valued that benefit?

22 A. Well, by benefit if we are talking -- I am

1 referring to the customers that you are talking about
2 make those decisions on those days. I think the
3 other customers that don't, that stay on the product,
4 are not benefitting because they are paying higher
5 prices to reflect that risk.

6 MR. TOWNSEND: Move to strike the answer as
7 non-responsive.

8 MR. RUSSELL: I think it was responsive. Could
9 we get the question read back?

10 JUDGE WALLACE: Go ahead and read it back, the
11 question and the answer.

12 (Whereupon the requested portion
13 of the record was read back by
14 the Reporter.)

15 JUDGE WALLACE: Okay, the answer is stricken.
16 That wasn't a response to the question posed.

17 THE WITNESS: We didn't survey customers.

18 BY MR. TOWNSEND:

19 Q. Do you believe that customers are likely to
20 wait until they know the price of the utility's
21 default service before making a decision regarding
22 their retail supply source?

1 A. Not all customers but some customers.

2 Q. Would you anticipate most customers?

3 A. I would anticipate that the majority of

4 customers do.

5 Q. But you really don't know the percentage;

6 right?

7 A. No.

8 Q. Would you agree that customers will not

9 know the actual price of the utility's supply service

10 until the utility files its supply charge tariffs

11 with the Commission?

12 A. Yes. Although they would have the

13 information in advance of that because the clearing

14 prices from the auction are posted as soon as the

15 auction is declared the result is successful. They

16 would have had --

17 Q. They have some information. They just

18 don't have the actual price of the utility's supply

19 service; correct?

20 A. Correct.

21 Q. Would you agree that a large -- strike

22 that.

1 Would you agree that there are a large
2 number of risk factors that influence the bids by the
3 bidders in the 2006 auction?

4 A. Yes.

5 Q. And you list a number of those risks at
6 pages 39 and 40 of your rebuttal testimony; correct?

7 A. Yes, those are some of the risks.

8 Q. Would you agree that suppliers also face
9 weather risk?

10 A. Yes.

11 Q. Did you present any analysis regarding what
12 percentage of the bid was comprised of weather risk?

13 A. No.

14 Q. Would you agree that suppliers also face
15 economic risk? That is, a risk that businesses might
16 close because of a downturn in the economy?

17 A. Yes.

18 Q. Did you present any analysis regarding what
19 percentage of the bid was comprised of that economic
20 risk?

21 A. No.

22 Q. And you recognize that there is

1 load-following risk; correct?

2 A. Yes.

3 Q. And you didn't present any analysis in your
4 prefiled testimony regarding what percentage of the
5 bid was comprised of load-following risk; correct?

6 A. Correct.

7 Q. But you did respond to a question earlier
8 that indicated that that risk could be somewhere in
9 the range of 12 to 15 percent; correct?

10 A. Correct.

11 Q. But you don't know what actual percentage
12 the bidders bid with regards to the -- strike that.

13 You don't know what percentage of the
14 bid of any individual bid was comprised of
15 load-following risk; do you?

16 A. No.

17 Q. And in fact you recognize that this risk,
18 the load-following risk, could be different for the
19 BGS-LP and the BGS-LFP customers; correct?

20 A. In my analysis I assume those risks are the
21 same and that there was no difference in the risks
22 between the LMP and the BGS-LP products. The load

1 factors of the large customers are generally higher
2 than the residential and small commercial customers,
3 so the load-following for cost for that type of load
4 profile is expected to be lower than it is for
5 residential and small customers.

6 Q. With regards to the economic risk, do you
7 have any sense as to whether that could be different
8 for the BGS-LP versus BGS-LMP customers?

9 A. I would say that the economic risk would
10 possibly be greater for the large customers.

11 Q. Because if one large customer goes out of
12 business, you could lose upwards of 50 megawatts
13 worth of load; correct?

14 A. True. The other side is, though, that we
15 have had the greatest amount of growth in the
16 residential class. So there has been on the upside,
17 there has been greater economic increase to that
18 product. So both of them have different
19 characteristics.

20 Q. But you don't know how bidders factor that
21 into their bid, do you?

22 A. No.

1 Q. Do you know how much any one of those
2 factors influenced any of the bids that the bidders
3 made in the 2006 auction?

4 A. I believe the difference between the LFP
5 and the FP for the Ameren products is solely due to
6 migration risks.

7 Q. But you don't know that, do you?

8 A. Well, when you look at the risks of
9 load-following, including weather and regulatory
10 legislative risks, the other things that I have
11 identified, those are the same across both those
12 products for the same utility.

13 Q. You just told me that there could be a
14 difference between the BGS-LP and the BGS-LFP for
15 economic risks, load-following risks and weather
16 risks; correct?

17 A. Right, but I think in the analysis I made
18 an assumption that -- I zeroed out basically the
19 difference in load-following because if I had
20 factored that in, it would have increased the amount
21 for migration risk.

22 Q. But you don't know that that's the way that

1 the bidders calculated load-following risk, do you?

2 A. Well, I know that the costs to serve a
3 flatter load profile is lower than it is the more
4 peaking profile, and that's the basis for my
5 statement.

6 Q. But with the economic risk you could have
7 either a large customer showing up or a large
8 customer leaving, and so an economic risk. A bidder
9 reasonably could conclude that there is a higher risk
10 with the larger customers; correct?

11 A. It is possible.

12 Q. And in fact you said that there was likely
13 a higher risk associated with the larger customers;
14 right?

15 A. I believe that risk is negligible compared
16 to the risk that they would switch.

17 Q. But you don't know how any one of the
18 bidders bid on any particular round, do you?

19 A. No.

20 Q. You didn't present any testimony regarding
21 any conversation you had with any of the bidders
22 discussing their bidding strategy, did you?

1 A. No, I didn't have those conversations.

2 Q. So there could be other factors that
3 influence the bidder's bid that you don't even know
4 about?

5 A. It is possible.

6 Q. And you don't know how much those other
7 factors impacted the difference between the BGS-LP
8 and the BGS-LFP products; correct?

9 A. No. The only other evidence that we had to
10 look at was the survey that you mentioned earlier in
11 which suppliers were asked to rank the products
12 according to risk. And we looked at that as part of
13 the support for our position.

14 Q. Or it could be just part of the argument
15 against your position; right?

16 A. I believe it supports our position.

17 Q. Do you anticipate that each of the risks
18 that we have discussed will be present in the 2008
19 auction?

20 A. Yes.

21 Q. And would you agree that there may be
22 additional factors that we haven't even thought of

1 that bidders may factor into the 2008 auction?

2 A. I can't think of any we haven't thought of,
3 but I suppose if we haven't thought of it, we --

4 Q. That's right. We know that we don't know;
5 right?

6 A. That's possible.

7 Q. Could you please explain the current
8 migration rules for ComEd?

9 A. For which customers? We are talking about
10 the switching rules?

11 Q. The migration rules. So customers rolling
12 onto a ComEd product versus being able to migrate off
13 of a product.

14 A. For the B customers, they can migrate off
15 at any time. And if they return, they stay for a
16 year. They can also switch to the hourly price
17 product. And there is very flexible rules for that
18 product coming on and off. The larger customers that
19 are eligible for the annual fixed price product
20 can -- from the 2006 auction if they were on that
21 service going into the window and made no decision at
22 all during the window, they retain a right to leave

1 for a RES only after the -- during the delivery
2 period. And they can't return then.

3 Q. Are you also familiar with the migration
4 rules for Ameren?

5 A. Generally, yeah.

6 Q. Could you explain those?

7 A. They have -- for their large customers over
8 one megawatt they have an enrollment window similar
9 to ours. It is 30 days for the customers up to three
10 megawatts and -- I'm sorry, 50 days for the customers
11 up to three megawatts and 30 days for the customers
12 over three megawatts, and I believe the customers
13 under one megawatt can also leave any time they want,
14 and I believe they are subject to the same rules as
15 ours on return.

16 Q. So there is a difference between the
17 migration rules for ComEd and the migration rules for
18 Ameren?

19 A. Yes.

20 Q. And there is also a difference between the
21 migration rules for the BGS-LFP and the BGS-FP
22 customers; correct?

1 A. Yes.

2 Q. And how much of a premium was included in
3 the auction product due to the existing migration
4 rules for each of ComEd and Ameren?

5 A. For ComEd the difference between the A and
6 the B price was roughly \$27, and for Ameren it was
7 \$20.18.

8 Q. Now, is that due to the enrollment window
9 or the migration rules?

10 A. I think the greater premium occurred in the
11 ComEd products because ComEd allowed customers to
12 leave outside the window.

13 Q. Again, did you present any analysis in your
14 testimony that quantifies the premium on the
15 migration risk versus the enrollment risk?

16 A. By migration risk are you referring to what
17 I call propensity?

18 Q. I think the ability to switch off of the
19 product outside of the enrollment window.

20 A. No, I didn't quantify that. I was
21 attempting to get just the enrollment window alone,
22 and I couldn't do that with the ComEd prices because

1 of the difference in the switching rules.

2 Q. Have customers taken advantage of the
3 ability to migrate off of the utility's supply
4 service outside of the enrollment window?

5 A. Yes.

6 Q. Do you know how many customers?

7 A. No, I don't.

8 Q. Would those figures be reflected on the
9 switching statistics that are reported to the
10 Commission?

11 A. They should be.

12 Q. Did ComEd conduct a formal survey of its
13 customers to determine whether they wanted ComEd to
14 change the migration rules?

15 A. No.

16 Q. Did ComEd conduct a survey, a formal
17 survey, of the bidders, or informal survey, I
18 suppose, of the bidders in the auction to determine
19 how much of a premium was included in their bids due
20 to the existing migration rules?

21 A. We didn't ask them how much premium they
22 put into their price. We asked them to rank the

1 products according to risk.

2 Q. Did you ask them or did the auction
3 manager?

4 A. I am sorry, the auction manager.

5 Q. And do you discuss that survey in your
6 testimony?

7 A. No, I don't.

8 Q. I would like you to turn to your rebuttal
9 testimony, page 7, lines 152 to 56, and let me know
10 when you are there.

11 A. Okay.

12 Q. ComEd has not presented testimony
13 affirmatively supporting Mr. Stephens' seven-day
14 enrollment window; correct?

15 A. Correct.

16 Q. And one of the reasons for that is because
17 you believe that there is a potential for customer
18 confusion; right?

19 A. Yes.

20 Q. Why do you think that there is a potential
21 for customer confusion?

22 A. Well, I think when you change the rules,

1 there is always a possibility that customers will be
2 confused about the new rules, and it is a concern
3 that we had.

4 Q. If the Commission directs the utilities to
5 adopt Mr. Stephens' proposal, would you agree that
6 the utilities would incur costs associated with
7 implementing Mr. Stephens' proposal?

8 A. Yes.

9 Q. And is it possible that these costs would
10 be recovered from the customers who take supply
11 service from the utility?

12 A. It is possible, yes.

13 Q. And the Commission has directed ComEd to
14 recover its RTP costs from the costs -- I am sorry,
15 from the customers who take the RTP service from
16 ComEd; correct?

17 A. Correct.

18 Q. Have you made any proposal as to how those
19 costs would be recovered -- strike that.

20 Have you made any proposal with
21 regards to how the costs associated with
22 Mr. Stephens' proposal would be recovered?

1 A. No, we have not.

2 Q. Would it be reasonable to recover those
3 costs from customers who take supply service from the
4 utility?

5 A. Yes.

6 Q. Would that be consistent with the
7 Commission's finding with regards to the Rider RTP
8 costs?

9 A. Yes.

10 Q. You propose modifying Mr. Stephens'
11 proposal; correct?

12 A. Correct.

13 Q. How so?

14 A. Mr Stephens' original proposal included
15 four choices, I believe, from recommitment to a
16 five-day window to a longer window, maybe 30 days and
17 then I think there was one longer than that. We
18 propose two choices, seven days and 20 days, with the
19 seven-days being an option that we would offer
20 customers and 20-days would be the default choice if
21 the customers either didn't elect or failed to give a
22 notice. The 20 days would be the default.

1 And then as well, as was discussed
2 earlier, we would take the results of that customer
3 feedback, and the auction manager and the staff and
4 the utilities would review that to see if there is a
5 viable auction product for the seven-day.

6 Q. Turn your attention to your rebuttal
7 testimony, page 11, lines 231 to 234.

8 A. Yes.

9 Q. There you indicate that ComEd intends to
10 educate its customers as early as this summer
11 regarding their supplier choices; correct?

12 A. Correct.

13 Q. You are not suggesting that you would
14 initiate that prior to the Commission entering its
15 order in this proceeding, are you?

16 A. No.

17 Q. And when are you anticipating the
18 Commission would issue its order in this proceeding?

19 A. August 6, I believe.

20 Q. Would you agree that if the enrollment
21 window is only seven days for some customers, that
22 there would be a high demand for consultants, agents

1 and brokers within that seven-day window?

2 A. I don't know. The reason I don't know is
3 because I think the process that the customer is
4 going through in terms of making their decision is
5 not limited to that seven-day window. So it is
6 possible that customers could engage in consultants
7 well before the seven days and may or may not need
8 them in the seven-day window.

9 Q. But you don't know?

10 A. I don't know.

11 Q. Has ComEd examined its general account
12 agent form to determine whether it would have to
13 modify that form to accommodate Mr. Stephens
14 proposal?

15 A. I don't believe we have.

16 Q. So it is possible that following the
17 Commission's order that ComEd may have to modify the
18 TAA form in order to allow account agents to be able
19 to make the selection for customers?

20 A. We have people -- I have already asked
21 employees in our energy acquisition, our electric
22 suppliers services group and our energy services

1 organization and customer service to start working on
2 a contingency should this be approved, to see what
3 work needs to be done and what timetable it would
4 have to be done under.

5 Q. But you don't even have those results yet,
6 do you?

7 A. No, but I have been told -- the groups took
8 a preliminary look at what was being asked and gave
9 me the feedback that it could be implemented.

10 Q. We will talk about some of those steps. Do
11 you agree that if the Commission were to direct ComEd
12 to adopt Mr. Stephens' proposal there would have to
13 be a significant customer education effort?

14 A. Yes, I think so.

15 Q. Would you agree that Mr. Stephens' proposal
16 would make the process more complex for utilities?

17 A. Yes.

18 Q. More complex for the auction manager?

19 A. I think, other than the decision on whether
20 or not to create a separate product, once that's
21 done, I am not sure it adds any additional complexity
22 to the auction. But there is clearly an additional

1 decision that has to be made.

2 Q. Would it add additional complexity for
3 customers?

4 A. It is an extra choice for them.

5 Q. They would have to determine whether or not
6 it is an extra choice for them; right?

7 A. Right. The seven-day is just an option.
8 They don't have to choose anything.

9 Q. And the seven days might not be offered to
10 some customers; right?

11 A. It would be offered to every eligible,
12 CPP-A eligible customers.

13 Q. So the customer has to determine whether or
14 not it is a CPP-A customers versus a CPP-B customer
15 sometime prior to responding to a request for an
16 enrollment window, right, a request for an enrollment
17 window form selection process?

18 A. Correct, they would have to know what group
19 they are in.

20 Q. It makes it more complex for customers;
21 right?

22 A. Yes.

1 Q. It makes the process for complex for retail
2 electric suppliers?

3 A. I don't know. Again --

4 Q. Customer communications would have to be
5 prepared with regards to this proposal; correct?

6 A. Yes.

7 Q. Some communications would have to occur
8 prior to the election made by the customer; correct?

9 A. Yes.

10 Q. An election form would have to be sent to
11 the customer; correct?

12 A. Yes.

13 Q. There would have to be a notice that went
14 out to customers regarding whether there was
15 sufficient load to conduct an auction for the
16 seven-day product; correct?

17 A. Correct.

18 Q. And ComEd would incur costs associated with
19 designing, printing and serving materials and postage
20 associated with that; correct?

21 A. Yes.

22 Q. Would ComEd agree to submit draft

1 communications to the Commission and to the parties
2 to this proceeding?

3 A. I believe so.

4 Q. Following the Commission's order in this
5 proceeding parties may file applications for
6 rehearing within 35 days following service of the
7 order; correct?

8 A. Yes.

9 Q. And the Commission has 20 days from the
10 date of receipt of the applications on rehearing --

11 JUDGE WALLACE: We are kind of beating a dead
12 horse here. That's in the Rules of Practice. We all
13 know that.

14 Q. Let's cut to the chase then. So
15 Ms. LaCasse said that she needed to have a final
16 answer from the customers by September 7; correct?

17 A. Yes.

18 Q. And you are presuming that the Commission
19 order doesn't come out until August 6; right?

20 A. We are assuming we have about a three-week
21 window.

22 Q. And so that three-week window, the parties

1 still could be filing applications for rehearing
2 during that three-week window?

3 A. Yes.

4 Q. Much less the Commission acting on the
5 applications for rehearing. That's a total of 55
6 days that that whole process could go on; right?

7 A. Yes.

8 Q. Would you agree that prior to the
9 announcement of the tranche target that the following
10 steps would have to occur: First, the customers
11 would have to be educated regarding their options;
12 right?

13 A. Yes.

14 Q. And has ComEd developed the educational
15 materials for that?

16 A. No.

17 Q. Have you begun to develop those materials?

18 A. We are starting right now, yes.

19 Q. How does ComEd intend to distribute those
20 materials?

21 A. I don't know. It is not determined.

22 JUDGE JONES: How much more do you have? We

1 are going to need some idea here, given the time and
2 the court reporter commitments and that sort of
3 thing.

4 MR. TOWNSEND: This is the last line of cross,
5 Your Honor.

6 JUDGE JONES: Can you give me an estimate of
7 that perhaps?

8 MR. TOWNSEND: Fifteen minutes, maybe less. I
9 asked you not to hold it against me.

10 JUDGE JONES: Well, I mean, we go by these
11 estimates. And then the court reporter can not work
12 indefinitely without some sort of a break, be it a
13 ten-minute break or a dinner break or something. So
14 we have to make some accommodations, show some
15 consideration there. So we need to have some idea of
16 what we are looking at so we can make these kinds of
17 decisions. If we need to take a long break, that
18 will be an inconvenience to a lot of parties but we
19 need to be considerate of all that are involved in
20 this.

21 MR. TOWNSEND: I think that I am still in the
22 range of what I had suggested in terms of my time.

1 JUDGE JONES: Well, I guess it depends on what
2 you mean by range. But we have obtained your
3 estimate there. So go ahead and finish up.

4 BY MR. TOWNSEND:

5 Q. Okay. Would you agree that prior to the
6 announcement of the tranche target, customers would
7 also have to make their election with regards to the
8 seven versus 20 days?

9 A. Yes.

10 Q. And have you begun to develop that form?

11 A. No.

12 Q. Would ComEd require a wet signature for
13 that form?

14 A. I don't know.

15 Q. Would ComEd accept electronic elections?

16 A. I don't know.

17 Q. What would happen if a customer selected
18 both a seven-day and a 20-day option?

19 A. We would have to contact the customer and
20 find out what their true intent was.

21 Q. And if the customer made one selection and
22 their agent made a different selection, what would

1 happen?

2 A. I don't know.

3 Q. And if the customer submits two
4 contradictory forms what would happen?

5 A. I don't know.

6 Q. Do you expect having an effective date on
7 the election form?

8 A. I am envisioning that the form would
9 describe to them what the difference between signing
10 a commitment for the seven-day window is versus the
11 20-day and that that would be spelled out on the
12 form. And as soon as they submitted it, it would be
13 a binding commitment.

14 Q. Would they have to date the form?

15 A. Probably.

16 Q. Have you presented any analysis regarding
17 the time necessary to insure that there is sufficient
18 time for each one of those steps?

19 A. No.

20 Q. Did ComEd experience issues associated with
21 implementing the first auction?

22 A. I am not sure what you mean by issues.

1 Q. Did it have difficulty in processing DASRs?

2 A. I don't know.

3 Q. Did some customers not get switched when
4 they were supposed to get switched?

5 A. That's possible.

6 Q. Were there information technology issues
7 associated with the implementation?

8 A. Yes.

9 Q. What were those?

10 A. Primarily related to the billing system,
11 and I know that because the first bills in January
12 all -- all the bills had to be prorated so that the
13 rates took effect on a calendar day, not a meter
14 reading cycle, that created some IT issues on the
15 billing side. And because we don't have the meter
16 data, there is big delays in reconciliation and
17 settlement to suppliers.

18 MR. TOWNSEND: If I could have a minute, I
19 might be able to short circuit this. Go off the
20 record.

21 (Pause.)

22 JUDGE WALLACE: Back on the record.

1 MR. TOWNSEND: Your Honors, I think we have
2 found a way to be able to short circuit this. We
3 have got four different exhibits. We don't have
4 sufficient copies to be able to distribute right now.
5 We will make copies this evening, though, and return
6 in the morning with copies for everyone.

7 We have agreement from ComEd's counsel
8 that we can just submit these as exhibits and they
9 would not object to that. So I think with that we
10 can conclude the cross.

11 JUDGE WALLACE: All right.

12 MR. TOWNSEND: Just for the record these are
13 electric supplier service department power point
14 presentations.

15 JUDGE JONES: Does anyone need to see those?

16 MR. TOWNSEND: I can make those available for
17 people to see yet this evening, if they would like.

18 JUDGE WALLACE: Are you going to number them
19 now?

20 MR. TOWNSEND: We can do it all in the morning,
21 Your Honor.

22 MR. RIPPIE: Or do a group exhibit.

1 MR. TOWNSEND: Or do a group.

2 JUDGE WALLACE: Yeah, we will just do them
3 tomorrow morning.

4 Has everyone had a chance to look at
5 them and is there any objection? Well, obviously,
6 since Mr. Townsend has the only copy, no one else has
7 looked at them.

8 MR. JONES: None that they know of.

9 JUDGE WALLACE: We will just hold this over til
10 tomorrow until everyone can get a copy. I don't know
11 if there is any objections or not.

12 MR. TOWNSEND: Fair enough.

13 JUDGE WALLACE: Mr. Robertson?

14 MR. ROBERTSON: I almost hesitate to raise my
15 hand, given the atmosphere in the room. But I did
16 reserve some time for this witness and I do have a
17 very few brief questions, nothing approaching the
18 magnitude --

19 JUDGE WALLACE: I notice you didn't have your
20 yellow pad out, so.

21

22

1 CROSS EXAMINATION

2 BY MR. ROBERTSON:

3 Q. Mr. McNeil, you reference concerns about
4 Mr. --

5 JUDGE JONES: Could you pull the mic a little
6 closer to you? Thank you.

7 Q. You reference concerns about the complexity
8 -- or Mr. Stephens' proposal would add some
9 complexity to the current electric purchase
10 requirements and power supply arrangements that
11 customers needed to make; is that correct?

12 A. That's fair.

13 Q. Now, at the time of the last auction did
14 customers also face a, compared to their old bundled
15 service, a series of complex decisions in securing
16 their supply?

17 A. Yes.

18 Q. And at the time of the last auction is it
19 true that in the General Assembly there was pending,
20 or shortly thereafter, proposals were made in the
21 veto section for initiation of rate freeze
22 legislation?

1 A. Yes.

2 Q. And from a customer's point of view now, at
3 that time did they face the complexity of making
4 decisions about supply options with the possibility
5 that they might actually be able to return to rates
6 in effect prior to January 2, 2007?

7 A. Yes.

8 Q. And in spite of all those complexities is
9 it true that after January 1, 2007, hundreds, if not
10 thousands, of customers elected to vote with their
11 pocketbook and choose a retail electric supplier
12 other than ComEd?

13 A. That's correct.

14 Q. Now, do you believe that altering, either
15 under Mr. Stephens' proposal or under the utility
16 proposals, the enrollment window options available to
17 customers will add such complexity to the process
18 that customers will not be able to make a choice in
19 an efficient and economic fashion?

20 A. No.

21 MR. ROBERTSON: Thank you.

22 JUDGE WALLACE: Redirect?

1 MR. RUSSELL: I have two or three, please.

2 REDIRECT EXAMINATION

3 BY MR. RUSSELL:

4 Q. Mr. McNeil, can I refer you to CES Cross
5 Exhibit 5 which was the comparison of the options?

6 A. Yes.

7 Q. In the right-hand column, the ability to
8 return for the three top rows, 400 kW to over three
9 meg, it shows no ability to return?

10 A. Right.

11 Q. Is it your understanding that no refers to
12 no ability to return to annual service?

13 A. It is my understanding that they could not
14 return to the fixed price annual service.

15 Q. They can return to Commonwealth Edison's
16 service?

17 A. Yes, they could.

18 Q. Hourly?

19 A. Hourly service.

20 Q. Thank you. And there was also a question
21 or two by Mr. Townsend concerning whether or not the
22 survey conducted by the auction manager attached to

1 your testimony supported your position or did not
2 support your position. I believe your response was
3 that it did support your position on the enrollment
4 window. Could you explain why that survey supports
5 your position on the enrollment window?

6 A. Yes. Specific to the question of the
7 enrollment windows, suppliers were asked to rank the
8 products in the auction according to how they viewed
9 the risk of the product. And the majority of the
10 suppliers clearly indicated that the greatest risk
11 was for the annual product, the 400 kW to three
12 megawatt customer product.

13 Then they were asked, if the length of
14 the enrollment window were shortened, would it change
15 the rank order that they gave to which products are
16 the highest degree of risk. And they said no, it
17 would not, that the annual product would still be the
18 most risky of the choices that they had. However,
19 the shortening of the window would in fact reduce the
20 risk of that product, but it still would remain
21 ranked as the most risky.

22 Q. Thank you. Also you were asked a question

1 of whether or not you had done a survey of customers
2 about the enrollment windows and whether they thought
3 they should shorten the window. I think you
4 responded you had not. Do you have any further
5 comments on the significance of not having done such
6 a survey?

7 A. Well, we didn't do a survey because we
8 believed that the price that came out of the last
9 auction for the CPP-A product of over \$90 rendered
10 that product uneconomical and in fact 85 percent of
11 the power for the CPP-A load is gone and being served
12 by alternative suppliers. So I don't think we needed
13 to survey the customers to ask them if they wanted to
14 keep that kind of pricing structure.

15 MR. RUSSELL: Thank you. That's all the
16 questions I have.

17 JUDGE WALLACE: Does that bring up any recross?
18 Okay. Let's go off the record.

19 (Witness excused.)

20 (Whereupon there was then had an
21 off-the-record discussion.)

22 JUDGE WALLACE: Back on the record. Just two

1 housekeeping matters. There was a petition to
2 intervene by Commerce Energy filed. I don't believe
3 we have ruled on it, that petition. Is there any
4 objection? That petition is granted.

5 There was also a request to withdraw
6 by Constellation NewEnergy Commodities Group. That
7 request to withdraw will be granted.

8 And I think we will start at 9:30
9 tomorrow. That way if we get done earlier, everyone
10 can leave town.

11 MR. TOWNSEND: Your Honor, one additional
12 housekeeping, I would like to move into evidence CES
13 Cross Exhibits 6, 7, 8 and 9. I'm not moving into
14 evidence Cross Exhibit 5, as I had indicated.

15 JUDGE WALLACE: Any objections to CES Cross
16 Exhibits 6, 7, 8 and 9? All right. Those four are
17 admitted.

18 (Whereupon CES Cross Exhibits 6,
19 7, 8 and 9 were admitted into
20 evidence.)

21 MR. GARG: Your Honor, I would like to
22 distribute AG Cross Exhibit 6. We did not have

1 copies at the time it was introduced.

2 JUDGE WALLACE: All right. Anything else?

3 JUDGE JONES: I think our two witnesses
4 tomorrow for whom there is 20, 25 minutes of cross, I
5 just want to make sure there are still questions for
6 them. One would be the first of our three panels
7 including Witness Eber and another witness, Graves.
8 Are there still questions for those witnesses? I
9 assume there are, but let me check.

10 MS. McKIBBIN: Your Honor, the length of my
11 questions for Witness Eber will depend on some
12 discovery that I expect to receive this evening.

13 MR. RIPPPIE: Mr. Graves, I believe with the
14 concurrence of the other parties that had requested
15 cross but I need to check with Susan, has requested,
16 because of travel plans, to be moved up to the first
17 witness of the day, rather than the last witness of
18 the day. And I don't think anybody had any
19 objection.

20 JUDGE WALLACE: All right. We are adjourned
21 until 9:30 tomorrow morning.

22 JUDGE JONES: Thank you, all. See you tomorrow

1 morning.

2 (Whereupon the hearing in this
3 matter was continued until April
4 26, 2007, at 9:30 a.m. in
5 Springfield, Illinois.)

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